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No. 11695

2488

Exhibits in Custody
of Clerk.

4/12 ✓
United States
Circuit Court of Appeals

For the Ninth Circuit.

CAL-BAY CORPORATION, MARIA FARIA,
JOSEPH FARIA, JR., EDWARD FARIA
and MAE E. ROCHE,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee

Transcript of Record

In Three Volumes

VOLUME I

Pages 1 to 432

FILED
OCT 24 1947

PAUL P. O'BRIEN,
CLERK

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

No. 11695

United States
Circuit Court of Appeals
For the Ninth Circuit.

CAL-BAY CORPORATION, MARIA FARIA,
JOSEPH FARIA, JR., EDWARD FARIA
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Attorney for Plaintiff and Appellee.

Jury trial before the Honorable Louis E. Goodman,
District Judge.

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 ACRES OF LAND, more or less, situate in
the County of Contra Costa, State of Cali-
fornia, MAE E. ROCHE, EDWARD FARIA,
MARY FARIA, G. FARIA, et als.,

Defendants.

COMPLAINT IN CONDEMNATION

Comes now the plaintiff, United States of America, by Mitchell Bourquin, Special Assistant to the Attorney General, at the direction and under the authority of the Attorney General of the United States, and pursuant to the request of the Secretary of the Navy of the United States, and for cause of action against the above named defendants alleges as follows: [1*]

I.

That this proceeding is instituted and the lands hereinafter described are taken and condemned pursuant to and under the provisions and authority

* Page numbering appearing at foot of page of original certified Transcript of Record.

of and for the purposes and uses authorized by the Acts of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and June 22, 1944 (Public Law 347, 78th Congress).

II.

That the estate or interest which plaintiff seeks to take and condemn is the fee simple title in and to the lands hereinafter described, subject, however, to existing public utility easements.

III.

That the acquisition of said lands by plaintiff will be of the greatest public benefit and the least private injury; that no part of said lands has heretofore been appropriated for public use by plaintiff, or the State of California, or any political subdivision thereof.

IV.

That there are sufficient funds now available with which plaintiff can and is authorized to pay just compensation for the lands sought to be taken and condemned herein in whatever sum may be ultimately awarded in this proceeding for the taking of said lands, and any damages resulting therefrom.

V.

That plaintiff is informed and believes and therefore alleges that the lands taken by this proceeding are not a part of any larger tract belonging to the apparent or purported owners of said lands. [2]

VI.

That the defendants, First Doe to Fiftieth Doe, inclusive, and First Doe Corporation to Twenty-fifth Doe Corporation, inclusive, are sued and designated herein by fictitious names for the reason that their true names are unknown to plaintiff, but the plaintiff will, upon ascertaining their true names, substitute the same for such fictitious names by appropriate amendment, and prays such leave of the Court; that said defendants, and each of them, may have or claim to have an interest in some piece or parcel of the lands sought to be taken and condemned in this action, but that the nature, character or extent of such interest is unknown to plaintiff.

VII.

That the lands hereinafter described have been selected by the Secretary of the Navy of the United States to be used for the expansion of the United States Naval Magazine, Contra Costa County, California, and are sought to be taken and condemned for said purpose and use and are suitable and necessary therefor. That said use of said lands constitutes a public use and said lands are required for immediate use in order to carry out said purpose.

VIII.

That the land to be taken and condemned in this proceeding is situate in the County of Contra Costa, State of California, and is more particularly described as follows: [3]

Beginning at the point of intersection of the Northerly line of the State Highway (known as Arnold Industrial Highway) running from the Town of Pacheco to the Town of Pittsburg, California, and the Easterly boundary line of the Oakland Antioch & Eastern Railroad right of way (now Sacramento Northern Railroad); running thence Northerly along said Easterly line of said railroad right of way 940 feet, more or less, to the Southeasterly boundary line of the right of way of that certain 22-inch "Standard Pacific Gas Line"; thence Northeasterly along said Southeasterly line of said right of way 4180 feet, more or less, to its intersection with the Southwesterly line of the Contra Costa Canal; thence Southeasterly along said Southwesterly line of said canal 150 feet, more or less, to an angle point therein; thence continuing along said canal line Easterly 370 feet, more or less, to an angle point therein; thence continuing Southeasterly along said Southwesterly line of said canal and parallel with that certain tangent line (and its Southeasterly production) on the center line of said canal between Stations "P.T. 1440+27.74" and "P.C. 1452+99.92," as so designated upon Sheets 80 and 92 of 146 sheets showing "Central Valley Project, Contra Costa Canal System, General Topography," a distance of 2830 feet, more or less, to the Southerly line of said State Highway; thence Easterly and Northeasterly along the Southerly and Southeasterly line of said State Highway 2900 feet, more or less, to a line drawn from a point on the

East and West center line of Section 36, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, distant thereon 1320 feet Easterly from the Westerly line of said Section 36 through a point on the West line of Section 16, in Township 2 North, Range 1 West, Mount Diablo Base and Meridian, distant thereon 1320 feet Northerly from the Southwest corner of said Section 16; thence Southeasterly along the last mentioned line so drawn 24,830 feet, more or less, to said point on said center line of said Section 36; thence Southwesterly 5550 feet, more or less, to an angle point in the Southeasterly boundary line of Rancho Monte Del Diablo lying in the Northeast quarter of Section 2, Township 1 North, Range 1 West, Mount Diablo Base and Meridian; thence Southwesterly along the Southeasterly boundary line of said Rancho 2420 feet, more or less, to the center line of a certain road running Northwest and Southeast from the point where Bailey Road crosses the Bay Point & Clayton Railroad to the Southeasterly boundary line of said Rancho; thence Northwesterly along said center line of said last mentioned road 8450 feet, more or less, to the center line of said Bailey Road; thence Southwesterly along said center line 700 feet, more or less, to the Southwesterly bank of Mt. Diablo Creek; thence Northwesterly along a line drawn at a right angle to said center line of said Bailey Road and crossing that certain 103-acre parcel of land now or formerly owned by Van Heeckeren, a distance of 2000 feet, more or

less, to the Northwesterly boundary line of said 103-acre parcel of land; thence Southwesterly along said 103-acre parcel of land 900 feet, more or less, to the center line of a certain road forming the Northeasterly boundary line of the "Gehringer Subdivision" in Clayton Valley, California; thence Northwesterly along said center line and its Northwesterly production 7900 feet, more or less, to the Southeasterly line of [4] that certain 40-acre parcel of land now or formerly owned by A. J. Diaz; thence Northeasterly along the Southeasterly line of said 40-acre parcel of land 1200 feet, more or less, to the center line of a road running along the Northeasterly boundary line of said 40-acre parcel of land; thence Northwesterly along said center line 2150 feet, more or less, to the center line of Willow Pass Road; thence Southwesterly along said center line 75 feet, more or less, to the Southwesterly boundary line of that certain 162.29-acre parcel of land now or formerly owned by J. C. Noia; thence Northwesterly along the Southwesterly boundary line of said 162.29-acre parcel of land 3290 feet, more or less, to the most Northerly corner of that certain 310.05-acre parcel of land owned by the United States of America; thence Northwesterly continuing along the Southwesterly boundary line of said 162.29-acre parcel of land and along the Southwesterly boundary line of that certain 28.17-acre parcel of land now or formerly owned by E. L. and Opal G. Bayes 1650 feet, more or less, to the Southeasterly corner of that certain 46.86-acre parcel of land now

or formerly owned by Melvern S. Hogan; thence Northeasterly along the Southeasterly line of said 46.86-acre parcel of land 420 feet, more or less, to a fence corner; thence Northwesterly along a fence crossing said 46.86-acre parcel of land 380 feet, more or less, to a fence corner; thence Northeasterly along a fence 260 feet, more or less, to an angle point in said fence; thence Northwesterly along said fence 50 feet, more or less, to a fence corner; thence Northwesterly along said fence 440 feet, more or less, to a fence corner where a fence running Northwest and Southeast intersects a fence running Northeast and Southwest in the approximate center of said 46.86-acre parcel of land; thence Northwesterly 1040 feet, more or less, to the Northwesterly corner of said 46.86-acre parcel of land; thence Northwesterly along the dividing line between that certain 79.20-acre parcel of land now or formerly owned by M. R. Freitas and that certain 112.85-acre parcel of land now or formerly owned by Hugo Carlson, a distance of 830 feet, more or less, to the Easterly boundary line of said Oakland Antioch & Eastern Railroad right of way; thence Northerly along said Easterly boundary line of said railroad right of way 2260 feet, more or less, to the point of beginning.

Containing 5430 acres, more or less. [5]

IX.

That said land may be divided into numbered parcels, the description and apparent and purported owners of which are as follows:

Parcel No.	Owner

3	Ralph D. Bollman

57	Mae E. Roche
58	Edward Faria
59	Mary Faria

64	G. Faria

That the County of Contra Costa may have or claim some interest in the hereinbefore described land, and is therefor joined as a defendant.

That a map showing the lands taken as hereinabove described is attached hereto, marked Exhibit "A" and made a part hereof by reference. [6]

X.

That a state of war now exists between the Plaintiff and certain foreign governments and pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress), the Plaintiff upon the filing of this Complaint, becomes entitled to the right to take immediate possession of the above described property; and that the above mentioned Special Assistant to the Attorney General has been directed by the Attorney General of the United States to take proper proceedings herein to secure from this Honorable Court an Order for immediate possession.

Wherefore, Plaintiff prays:

1. For an Order authorizing the United States to take immediate possession of the above described property;

2. For Judgment;

(a) Decreeing that said property above described, to the extent of the title and interest which plaintiff seeks to acquire by this action, is condemned for necessary public uses of the Plaintiff, as authorized by law; that all of said lands are necessary and suitable thereto;

(b) Determining the value of the property subject of this action, and each separate interest therein, and directing the payment for each separate interest to the persons entitle thereto;

3. For such other and further relief as the Court shall deem meet and proper in the premises.

/s/ M. MITCHELL BOURQUIN,

Special Assistant to the
Attorney General,

Attorney for Plaintiff.

Verification

United States of America,
Northern District of California,
City and County of San Francisco—ss.

M. Mitchell Bourquin, being first duly sworn,
deposes and says:

That he is a Special Assistant to the Attorney

General of the United States and attorney for the plaintiff in the above entitled action; that he has read the foregoing Complaint in Condemnation and knows the contents thereof; that the same is true of his own knowledge except as to matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

That the reason this verification is made by affiant and not by the plaintiff is that the plaintiff is a corporation sovereign.

That the sources of affiant's information and the grounds for his belief are the official communications, records, files and documents received from the Attorney General of the United States and from the Secretary of the Navy of the United States.

/s/ M. MITCHELL BOURQUIN

Subscribed and sworn to before me this 22nd day of July, 1944.

[Seal] LOUIS V. VASQUEZ,

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires December 4, 1947.

[Here follows Exhibit "A", Map of Lands.]

[Endorsed]: Filed at 3:40 p.m. July 22, 1944.
C. W. Calbreath, Clerk. [8]

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 ACRES OF LAND, more or less, situate in
the County of Contra Costa, State of Cali-
fornia, W. J. VON HECKEREN, et al.,

Defendants.

ORDER FOR IMMEDIATE POSSESSION

It appearing from the Complaint on file herein
that application has been made by Plaintiff to be
granted immediate possession of the lands subject
of this action, and good cause appearing therefor,

It Is Hereby Ordered that the United States of
America be, and it is hereby granted leave to take
immediate possession of said land and property, and
to use said land and property to the extent prayed
for, and for the purposes alleged in said Complaint,
and to proceed thereon with the authorized public
works of the United States;

It Is Further Ordered that the Defendants and
all other persons in possession of said property are
hereby directed to deliver immediate possession
thereof to the United States and its agents, and the
United States Marshal is directed to place and

maintain Plaintiff in possession of said property.

The Court reserves the right to make such other and further orders and decrees as may be necessary in the premises.

And It Further Appearing that Plaintiff has made adequate provision for the payment of just compensation for the taking of said land and property, it shall not be necessary for the Plaintiff to deposit any money or other security for the purpose of securing payment to the parties entitled thereto.

The land and property subject of this order is situate in the County of Contra Costa, State of California, and is more particularly described as follows: [10]

[Attached land description is identical with description set out in Complaint in Condemnation appearing on pages 5 to 8.]

Done in open Court, this 24th day of July, 1944.

A. F. ST. SURE,

Judge, United States District Court, Northern District of California.

[Endorsed]: Filed at 2:30 p.m. July 24, 1944.
C. W. Calbreath, Clerk. [12]

[Title of District Court and Cause.]

PETITION FOR ORDER MODIFYING ORDER
OF IMMEDIATE POSSESSION AS TO
PARCELS 58 AND 59

Come now the plaintiff, United States of America, by M. Mitchell Bourquin, Special Assistant to the Attorney General, and Cal-Bay Corporation, a California corporation, defendant sued herein as First Doe Corporation, and respectfully petition this court as follows:

That whereas said defendant Cal-Bay Corporation was in possession of Parcels 58 and 59 as the same are designated in the Complaint and Order for Immediate Possession on file herein and desire to remain in possession thereof for the purpose of prosecuting its drilling and other operations thereon:

That an order modifying the order for immediate possession made herein on July 24, 1944, be issued out of this court in respect to said defendant and said parcels 58 and 59 whereby said defendant shall be permitted to continue in possession of said parcels and continue its operations thereon [13] until thirty (30) days after service by plaintiff upon said

defendant, or on its attorneys herein, of written notice of the termination of said right to possession.

UNITED STATES OF AMERICA

By /s/ M. MITCHELL BOURQUIN,
Special Assistant to The Attorney General
Attorney for Plaintiff.

FITZGERALD, ABBOTT & BEARDSLEY,
By /s/ CHARLES A. BEARDSLEY,
Attorneys for Defendant.

ORDER MODIFYING ORDER OF IMMEDIATE POSSESSION AS TO PARCELS 58 AND 59

Upon reading the Petition of plaintiff, United States of America, and defendant, Cal-Bay Corporation, and good cause appearing therefor, it is hereby ordered that the Order for Immediate Possession heretofore issued out of this court on July 24, 1944, be and it is hereby amended in respect to said defendant and Parcels 58 and 59 as the same are designated in the Complaint and said Order for Immediate Possession on file herein so that said defendant may continue in possession and may continue its operations on said Parcels 58 and 59 until thirty (30) days after service by plaintiff on said defendant, or on its attorneys herein, of written notice of the termination of said right to possession: that thereupon said defendant shall forthwith vacate

said parcels and shall surrender the same to plaintiff.

Done in open court this 28th day of September, 1944.

/s/ LOUIS E. GOODMAN,

Judge, United States District Court, Northern
District of California.

[Endorsed]: Filed Sept. 28, 1944.

[Title of District Court and Cause.]

NOTICE OF TERMINATION OF RIGHT TO
POSSESSION OF PARCELS 58 AND 59 IN
THIS ACTION

To defendant Cal-Bay Corporation, a corporation,
and to Messrs. Fitzgerald, Abbott & Beardsley,
its Attorneys:

You and each of you will please take notice as follows: That pursuant to the Order of Court modifying Order for Immediate Possession as to Parcels 58 and 59 in this action, dated September 28, 1944, your right to possession of Parcels 58 and 59, as the same are designated in the Complaint and Order for Immediate Possession on file herein, is hereby terminated; that defendant Cal-Bay Corporation may continue in possession and may continue its operations on said Parcels 58 and 59 until thirty (30) days after service of this Notice as provided in said Order of Court; and that thereupon defendant Cal-Bay Corporation shall forth-

with [15] vacate said Parcels 58 and 59 and shall surrender the same to plaintiff.

Reference is made to the said Order of Court dated September 28, 1944, which is incorporated in this Notice by reference.

Dated, December 15, 1944.

/s/ M. MITCHELL BOURQUIN,
Special Assistant to The Attorney General
Attorney for Plaintiff.

Receipt of a copy of the foregoing Notice of Termination of Right to Possession of Parcels 58 and 59 in this Action, is hereby acknowledged, this 15th day of December, 1944.

FITZGERALD, ABBOTT & BEARDSLEY,
Attorneys for Defendant.

[Endorsed]: Filed Dec. 20, 1944.

[Title of District Court and Cause.]

STIPULATION FOR FINAL JUDGMENT ON
PARCEL 58; AND ORDER DIRECTING
PAYMENT OF MONEY TO DEFENDANT

It is hereby stipulated and agreed by and between the United States of America, hereinafter called plaintiff, and Edward Faria, hereinafter described as defendant, as follows:

I.

The Complaint was filed in this action on July 22,

1944, and defendant acknowledges that he has been served with a copy of the Complaint, Summons and Order for Immediate Possession in this action.

II.

Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of four hundred and no-100 dollars (\$400.00), as full, adequate and just compensation for the taking of said [17] Parcel 58, as described in this action, and for all his right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 18; instrument dated February 21, 1942 and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 24; instrument dated April 28, 1942 and recorded August 7, 1942 in Volume 674 of Official Records of Contra Costa County, at page 55; instrument dated August 11, 1941 and recorded April 10, 1942 in Volume 637 of Official Records of Contra Costa County, at page 488; instrument dated February 21, 1942 and recorded April 10, 1942 in Volume 655 of Official Records of Contra Costa County, at page 23; instrument dated August 11, 1941 and recorded August 7, 1942 in volume 672 of Official Records of Contra Costa County, at page 473.

III.

Defendant warrants that at the time of and immediately prior to the filing of this action by

plaintiff, defendant was the owner of said Parcel 58, and defendant is entitled to all the compensation to be paid for the taking thereof, subject to the exceptions contained in preliminary title report No. 414802 issued by Title Insurance and Guaranty Company, San Francisco, California (Contra Costa No. 90262-58), and said defendant consents that upon the entry of an order of this Court in the form attached hereto, directing the payment to Contra Costa County Title Company, Martinez, California, of the sum of four hundred and no/100 dollars (\$400.00), without interest, for defendant's account, a Final Judgment may be entered without notice to defendant, in favor of plaintiff and against defendant, condemning [18] said Parcel 58, in fee simple absolute, and any right, title and interest of the defendant in and to said parcel and any property subject to this action, except mineral rights described in Paragraph II hereof; and defendant further consents that the correct description of property included in said Parcel 58 may be set forth in said Final Judgment.

IV.

It is further stipulated and agreed that the agreed sum of four hundred and no/100 dollars (\$400.00) may be deposited by plaintiff in the Registry of the Court as just compensation for said land, and that the Court may direct the Clerk to pay said sum to Contra Costa County Title Company, as agent for defendant, and Contra Costa County Title Company may, as agent for defendant, without charge or cost to defendant, pay and satisfy all

taxes, liens and other charges against said property, except mineral rights provided by instruments particularly described in Paragraph II hereof, and pay the balance to said defendant.

UNITED STATES OF
AMERICA

By /s/ M. MITCHELL BOURQUIN,
Special Assistant to The
Attorney General
Attorney for Plaintiff.

/s/ EDWARD FARIA,
ORLINDA FARIA,
Wife of Edward Faria,
Defendant,

The signature of Edward Faria sworn to before me this 1st day of March, 1945.

[Seal] E. P. JACKSON,

Notary Public in and for the County of Contra
Costa, State of California.

My commission expires July 20, 1947.

ORDER

Pursuant to the terms of the attached Stipulation, the clerk of the above entitle Court is hereby directed to receive from plaintiff and pay to Contra Costa County Title Company, as agent for Edward Faria, defendant named in the Stipulation attach hereto, the sum of four hundred and no/100 dollars

(\$400.00), as full, just and adequate Compensation for the taking by plaintiff of Parcel 58, excepting mineral right described in paragraph II of the attached Stipulation; and plaintiff is directed to prepare Final Judgment in accordance with said stipulation.

Dated: March 8th, 1945.

/s/ LOUIS E. GOODMAN,

Judge, United States District Court, Northern
District of California.

[Endorsed]: Filed March 8, 1945.

[Title of District Court and Cause.]

STIPULATION FOR FINAL JUDGMENT ON
PARCEL 59; AND ORDER DIRECTING
PAYMENT OF MONEY TO DEFENDANT

It is hereby stipulated and agreed by and between the United States of America, hereinafter called plaintiff, and Maria Faria (also known as Mary Faria), hereinafter described as defendant, as follows:

I.

The Complaint was filed in this action on July 22, 1944, and defendant acknowledges that she has

been served with a copy of the Complaint, Summons and Order for Immediate Possession in this action.

II.

Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of twenty-seven thousand and no/100 [21] dollars (\$27,000.00) (including salvage to defendant in the amount of \$220.00), as full, adequate and just compensation for the taking of said Parcel 59, as described in this action, and for all her right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941 and recorded April 10, 1942 in Volume 637 of Official Records of Contra Costa County, at page 488; instrument dated February 21, 1942 and recorded April 10, 1942 in Volume 655 of Official Records of said Contra Costa County, at page 23; and instrument dated April 28, 1942 and recorded August 7, 1942 in Volume 672 of Official Records of said Contra Costa County, at page 473.

III.

Defendant warrants that at the time of and immediately prior to the filing of this action by plaintiff, defendant was the owner of said Parcel 59, and defendant is entitled to all the compensation to be paid for the taking thereof, subject to the exceptions contained in preliminary title report No. 414802 issued by Title Insurance and Guaranty Company, San Francisco, California (Contra

Costa No. 90262-59), and said defendant consents that upon the entry of an Order of this Court in the form attached hereto, directing the payment to Contra Costa County Title Company, Martinez, California, of the sum of Twenty-six thousand, seven hundred eighty and no/100 dollars (\$26,780.00), without interest, for the defendant's account, a Final Judgment may be entered without notice to defendant, in favor of plaintiff and against defendant, condemning said Parcel 59, in fee simple absolute, and any right, title and interest of the defendant in and to said parcel and any property subject to this action, except mineral rights described in Paragraph II hereof; and defendant further consents that the correct description of property included [22] in said Parcel 59 may be set forth in said Final Judgment.

IV.

It is further stipulated and agreed that the agreed sum of twenty-six thousand seven hundred eighty and no/100 dollars (\$26,780.00) may be deposited by the plaintiff in the Registry of the Court as Just compensation, for said land, and that the Court may direct the Clerk to pay said sum to Contra Costa County Title Company as agent for defendant, and Contra Costa County Title Company may as agent for defendant, without charge or cost to defendant, pay and satisfy all taxes, liens and other charges against said property, except mineral rights provided by instruments particularly de-

scribed in Paragraph II heretofore, and pay the balance to said defendant.

UNITED STATES OF AMERICA,
Plaintiff.

/s/ M. MITCHELL BOURQUIN,

Special Assistant to the Attorney
General,
Attorney for Plaintiff.

Her X Mark

MARY FARIA, also known as
Mary Faria.

The signature of Maria Faria, also known as Mary Faria, sworn to before me, this 1st day of March, 1945.

[Seal] /s/ E. P. JACKSON,

Notary Public in and for the
County of Contra Costa.

My commission expires July 20, 1947.

Maria Faria being unable to write, made her mark in our presence, and requested the undersigned E. P. Jackson, to write her name, which he did; and we now sign our names as witnesses thereto.

/s/ E. P. JACKSON,

/s/ L. L. BOLLA.

ORDER

Pursuant to the terms of the attached Stipulation, the Clerk of the above entitled Court is hereby directed to receive from plaintiff and pay

to Contra Costa County Title Company, as agent for Maria Faria (also known as Mary Faria), defendant named in the Stipulation attached hereto, the sum of twenty-six thousand seven hundred eighty and no/100 dollars (\$26,780.00) (defendant having received \$220.00 in salvage), as full just and adequate compensation for the taking by Plaintiff of Parcel 59, excepting mineral rights described in paragraph II of the attached Stipulation; and plaintiff is directed to prepare Final Judgment in accordance with said Stipulation.

LOUIS E. GOODMAN,
Judge, United States District Court, Northern
District of California.

Dated March 12, 1945.

[Endorsed]: Filed March 12, 1945. [24]

[Title of District Court and Cause.]

STIPULATION FOR FINAL JUDGMENT ON
PARCEL 57, AND ORDER DIRECTING
PAYMENT OF MONEY TO DEFENDANT

It is hereby stipulated and agreed by and between the United States of America, hereinafter called plaintiff and Mae E. Roche, hereinafter described as defendant, as follows:

I.

The Complaint was filed in this action on July 22, 1944, and defendant acknowledges that he has been served with a copy of the Complaint, Sum-

mons and Order for Immediate Possession in this action.

II.

Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of fifteen thousand and no/100 [25] dollars (\$15,000.00), as full, adequate and just compensation for the taking of said Parcel 57, as described in this action, and for all her right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941 and recorded April 10, 1942 in Volume 643 of Official Records of Contra Costa County, at page 10; instrument dated February 21, 1942 and recorded April 10, 1942 in Volume 655 of Official Records of said Contra Costa County, at page 21; instrument dated April 28, 1942 and recorded August 7, 1942 in Volume 628 of Official Records of said Contra Costa County, at page 278; instrument dated August 11, 1941 and recorded April 10, 1942, in Volume 637 of Official Records of said Contra Costa County, at page 488; instrument dated February 21, 1942 and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 23; and instrument dated April 28, 1942 and recorded August 7, 1942 in Volume 672 of Official Records of said Contra Costa County, at page 473.

III.

Defendant warrants that at the time of and immediately prior to the filing of this action by

plaintiff, defendant was the owner of said Parcel 57, and defendant is entitled to all the compensation to be paid for the taking thereof, subject to the exceptions contained in preliminary title report No. 414802 issued by Title Insurance and Guaranty Company, San Francisco, California (Contra Costa No. 90262-57), and said defendant consents that upon entry of an Order of this Court in the form attached hereto, directing the payment to Contra Costa County Title Company, Martinez, California, of the sum of fifteen thousand and no/100 dollars (\$15,000.00), without interest, for defendant's account, a Final Judgment may be entered without [26] notice to defendant, in favor of plaintiff and against defendant, condemning said Parcel 57, in fee simple absolute, and any right, title and interest of the defendant in and to said parcel and any property subject to this action, except mineral rights described in Paragraph II hereof; and defendant further consents that the correct description of property included in said Parcel 57 may be set forth in said Final Judgment.

IV.

It is further stipulated and agreed that the agreed sum of fifteen thousand and no/100 dollars (\$15,000.00) may be deposited by plaintiff in the Registry of the Court as just compensation for said land, and that the Court may direct the Clerk to pay said sum to Contra Costa County Title Company, as agent for defendant, and Contra Costa County Title Company may, as agent for defendant, without charge or cost to defendant,

pay and satisfy all taxes, liens and other charges against said property, except mineral rights provided by instruments particularly described in Paragraph II hereof, and pay the balance to said defendant.

UNITED STATES OF
AMERICA,

Plaintiff

By /s/ M. MITCHELL BOURQUIN,
Special Assistant to The
Attorney General
Attorney for Plaintiff

/s/ MAE E. ROCHE,
CHARLES ROCHE,
Defendant.

The signature of Mae E. Roche sworn to before me, this 2nd day of March, 1945.

[Seal] E. P. JACKSON,

Notary Public in and for the State of California,
County of Contra Costa.

My commission expires July 20, 1947. [27]

ORDER

Pursuant to the terms of the attached Stipulation, the Clerk of the above entitled Court is hereby directed to receive from plaintiff and pay to Contra Costa County Title Company, as agent for Mae E. Roche, defendant named in the Stipu-

lation attached hereto, the sum of fifteen thousand and no/100 dollars (\$15,000.00), as full, just and adequate compensation for the taking by plaintiff of Parcel 57, excepting mineral rights described in paragraph II of the attached Stipulation; and plaintiff is directed to prepare Final Judgment in accordance with said Stipulation.

Dated March 12th, 1945.

/s/ LOUIS E. GOODMAN,

Judge, United States District Court,
Northern District of California

[Endorsed]: Filed March 12th, 1945. [28]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT JOSEPH
FARIA, JR.

Defendant, Joseph Faria, Jr., answers the complaint as follows:

1. At the time of the commencement of this action, said defendant was, ever since has been, and now is, the owner of a leasehold interest and estate, in the hereinafter designated portions of the real property sought to be condemned, under oil and gas leases executed by the holders of the fee simple title thereto, under the terms of which leases said defendant had the exclusive right of exploring, mining and operating thereon for oil, gas and cas-

liquid gas, and other hydrocarbon substances, and taking, storing, removing and disposing of same, and manufacturing gasoline and other products therefrom, with the right for such purposes to the free use of oil, gas and water thereon, but [39] not from Lessors' water wells or ponds, and the right to build tanks, power houses, stations, houses for employees and such other structures (excepting railway) as might be necessary or convenient in his operations, together with rights-of-way, easements and servitudes for pipe lines, power lines, telephone and telegraph lines, with the right of removing any and all improvements placed or erected thereon by Lessee, including the right to pull all casing, for terms extending to the years 1961 and 1962 (the exact dates being as set forth in paragraph 2 hereof), and so long thereafter as oil or gas, or oil-bearing gas, or other hydrocarbon substances, or either or any of them, is produced thereon in quantities deemed paying by Lessee.

2. The real property subject to said leasehold interest and estate is situated in Contra Costa County, California, and described as follows:

(a) Property leased from Ralph D. Bellman, the certain term under the lease extending to August 11, 1962.

Parcel 1

Lots One (1) and Two (2) of the Northwest Quarter (NW $\frac{1}{4}$) of Section One (1), Township One (1) North of Range One (1) West, Mount Diablo Base and Meridian. Containing One Hun-

and Forty-five (45) acres of land, more or less.

Also a certain easement for road about 12 feet in width for ingress and egress to the above-described premises and more particularly located and described as follows:

Commencing at a point on the County road approximately 250 feet south of what is known as the Hillman house on the Hillman ranch, adjoining the above-described land, thence from said County road in a northerly direction across said Hillman ranch a distance of approximately 250 feet to the southerly side of the east and west line of said lots Nos. 1 and 2 of the Northwest Quarter (NW $\frac{1}{4}$) of Section One (1) Township One (1) North of Range One (1) West, Mount Diablo Base and Meridian, less 1.96 acres heretofore deeded to United States of America;

Parcel II

All that certain tract of land situate in said Contra Costa County, State of California, described as follows:

Being a portion of the 60-acre tract sold by S. Pacheco to George Maschwitz, March 30th, 1892, and bounded Northwest by lands of Dorr Sharp, Northeast by lands of Andrew Gehring, [30] Southwest by lands of John Decker and Southeast by Arroyo lands, and containing 18 $\frac{1}{2}$ acres of land, and known as the Motta place, and also known as the Daniel Matheson, in the Rancho del Diablo;

and being the same land conveyed to Daniel Matheson by George Mascarioli and wife by deed dated Oct. 30th, 1883, and recorded Nov. 3, 1883, in Vol. 44 of Deeds at page 136, records of Contra Costa County, California, less 6.71 acres heretofore deeded to United States of America;

Parcel III

Commencing at a stake in a mound on the Eastern side of the Monte del Diablo Rancho, this stake being the Southeast corner of tract of land sold by George Mascarioli to Andrew Gehringer; thence S. $43\frac{1}{2}$ Deg. W. 75 chains to stake corner; thence, at right angles S. $46\frac{1}{2}$ Deg. E. 15.33 $\frac{1}{3}$ chains to a stake corner; thence at right angles N. $43\frac{1}{3}$ Deg. East 75 chains to a stake corner; thence at right angles North $46\frac{1}{2}$ Deg. West 15.33 $\frac{1}{3}$ chains to a point of beginning, containing 115 acres of land, according to the survey made by James B. Abbott Feb. 23, 1863, being the same property deeded by H. Robinson to Dorr Sharp, by deed executed Oct. 4, 1877, recorded Oct. 11th, 1877, in Vol. 34 of Deeds at page 281, Records of Contra Costa County, and is the same property conveyed by Dorr Sharp to Andrew Gehringer by deed dated Nov. 5th, 1885, and recorded Nov. 5, 1885, in Vol. 47 of Deeds at page 286.

Parcel IV

Beginning at the S. E. Corner of that certain tract of land conveyed by George Mascarioli to Andrew Gehringer March 2nd, 1883, thence N. $43\frac{1}{2}$ Deg.

East running along the East boundary of lands of Gehringer estate 37.61 chains to station, being the corner to divisions "A" and "C" of the Gehringer Estate Partition, thence N. 52 Deg. 53' W. 11.695 chains to station at the N.E. Boundary of private road; thence S. 43 Deg. W. 36.43 chains to station in South line of lands of Gehringer estate at the corner of Divisions "A" and "B;" thence S. 47 Deg. 5' E. 11.595 chains into place of beginning, containing an area of 43.00 acres of land;

Also Part 2 Division "B" of said Gehringer Estate, being portions of Rancho Monte del Diablo and portion of Section 27, T. 1 N., R. 1 W., M.D.M., described as follows:

Beginning at the Northwest corner of a tract of land conveyed by Andrew Gehringer to H. G. Bollman by deed dated February 24th, 1886; thence S. 46 Deg. 50' E. (following fence line and along North boundary of Bollman's land); 40.18 chains to station corner to lands of Matherson (Matheson) and Bollman; thence N. 43 Deg. E. 25.78 chains to station in North boundary of Rancho Monte del Diablo; thence S. $47\frac{1}{2}$ Deg. E. running along said boundary line 10.00 chains to station to the point of intersecion of the center line of Section 27 T. 1 N., R. 1 W. with the same ranch boundary; thence N. $\frac{1}{2}$ Deg. W. running along the center line of Sec. 27, 64.00 chains to quarter section corner between Sections 22 and 27, T. 1 N., R. 1 W.; thence S. $89\frac{1}{4}$ Deg. running along and between Sections 22 and 27, 37.22 chains to station; thence S. $21\frac{3}{4}$ Deg. E. 6.50

chains to station in fence; thence S. 8 Deg. E. 5.84 chains (following fence) to station; thence S. 34 Deg. E (following fence 10.78 chains to station); thence S. $43\frac{1}{4}$ Deg. W. 37.67 chains into the place of beginning;

Containing an area of 263.41 acres of land; [31]

Also one-third ($\frac{1}{3}$) undivided interest in a private road 40 feet wide described as follows:

Beginning at gate post where the South line of the private road intersects west line of lands of Gehringer Estate; thence S. $48\frac{3}{4}$ Deg. E. running along the North line of Division "A" of Gehringer Estate Partition 20.16 chains to station; thence S. 52 Deg. 53' E. 8.575 chains to station; thence 43 Deg. E. 40 feet; thence N. 52 Deg. 53' W. 8.575 chains to station; thence N. $48\frac{3}{4}$ Deg. E. 20.16 chains to West line of lands of Gehringer Estate; thence S. 43 Deg. W. 40 feet into place of beginning, containing 1.75 acres;

Also one-third undivided interest in a certain strip of land used as a private road, conveyed by Salvio Pacheco to Andrew Gehringer, by deed dated March 12th, 1866, recorded in Vol. 13 of Deeds, page 405, records of Contra Costa County, and described as follows, to-wit:

Beginning at fence post situated in a gate way in West line of lands of Gehringer Estate, thence N. $59\frac{1}{2}$ Deg. W. along North boundary of road crossing Diablo Creek 24.45 chains to station; thence N. $65\frac{3}{4}$ Deg. W., 14.06 chains to station; thence N.

73 $\frac{3}{4}$ Deg. W. 6.51 chains to station; thence S. 80 Deg. W. 17.59 chains to station; thence N. 73 $\frac{3}{4}$ Deg. W. 9.39 chains to station; thence N. 71 $\frac{1}{2}$ Deg. W. 11.68 chains to station in East boundary of Willow Pass Road; thence Southerly along east boundary of said road 33 feet to station; thence running Easterly parallel with Northern boundary of private road to station in West line of lands of Gehringer Estate, at N.W. corner of Division "A"; thence Northerly running along Westerly line of lands of Gehringer Estate, 33 feet into place of beginning, containing an area of 4.18 acres of land;

The partition of the Gehringer Estate and the subdivision thereof hereinbefore referred to are as shown on a certain map made by Elan C. Brown, County Surveyor of Contra Costa County, and filed in the office of the County Recorder of Contra Costa County, on the 27th day of February, 1897;

There is excluded and excepted from the foregoing described parcels No. 2, No. 3, and No. 4 and which is not included in the appraisement thereof, that certain strip or tract of land situate in said County of Contra Costa, State of California, described as follows, to-wit:

A strip or tract of land 70 feet wide across the lands of the parties of the first part (H. G. Bollman and Mattie Smith-Bollman) hereinafter mentioned, being the strip or tract of land included between two parallel lines extending across said lands of the parties of the first part and drawn one on each side of the located center line of the railroad of the

party of the second part (Bay Point & Clayton Railroad Company) and 35 feet distant therefrom, said center line being more particularly described in that certain deed bearing date November 28th, 1906, made by and between H. G. Bollman and wife, as parties of the first part and Bay Point & Clayton Railroad Company, a corporation, party of the second part, filed for record and recorded the 28th day of November, 1906, in Vol. 22 of Deeds at page 216, records of Contra Costa County, California, and hereby referred to for greater certainty. Containing five acres of land, more or less.

(b) Property leased from Mary Faria, the certain [32] term under the lease extending to August 11, 1961, described as follows:

That portion of the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Sec. 21 T2N R1W that is a part of Lot 3, containing 73.51 acres, and being that portion of the property leased by Mary Faria to Joseph Faria, Jr., and Bud Hildebrand, by lease dated August 11, 1941, and recorded in Book 637 of Official Records, page 488, of the Records of said Contra Costa County, remaining after the assignment to Cal-Bay Corporation, recorded in Volume 672, page 473, Records of said County;

(c) Property leased from Geraldine Faria, the certain term under the lease extending to December 23, 1961, described as follows:

S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 22 T2N R1W; containing

80 acres, more or less, excepting therefrom the East 7 acres and the West 12 acres; also SW $\frac{1}{2}$ of Sec. 22, T2N R1W, containing a total of 221 acres, more or less, being the property described in the lease from Geraldine Faria to Joseph Faria, Jr., and Bud Hildebrand, dated December 23, 1941, and recorded in Book 652 of Official Records, page 13, Records of said Contra Costa County.

3. Said defendant alleges that on the date possession was taken by plaintiff, namely, July 24, 1944, the actual value of said leasehold interest and estate taken by plaintiff was as follows:

(a)	Part taken in Parcel 3A	\$19,800.00
(b)	Part taken in Parcel 59	17,500.00
(c)	Part taken in Parcel 64	200.00
		<hr/>
	Total	\$37,500.00

4. Said leasehold interest and estate in the real property described in paragraph 2 hereof constitutes the larger parcel of which the part taken is a part; said defendant alleges damages to the portion of said leasehold interest and estate not taken, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by plaintiff, in the sum of \$6,000.00.

Wherefore, said defendant prays judgment, if said property is condemned as sought by plaintiff, for the sum of \$43,500.00, together with interest

thereon, at the rate of 6% per [33] annum, from July 24, 1944.

FITZGERALD, ABBOTT &
BEARDSLEY,

Attorneys for Defendant,
Joseph Faria, Jr.

United States of America,
Northern District of California,
County of Alameda—ss.

Joseph Faria, Jr., being first duly sworn, deposes
and says:

That he is the defendant who files the foregoing
answer; that he has read said answer and it is true
of his own knowledge.

JOSEPH FARIA, JR.

Subscribed and sworn to before me January 15,
1946.

[Seal] CONSTANCE E. MULVANY,
Notary Public in and for said Alameda County,
California.

NOTICE OF ASSUMPTION OF BURDEN OF
PROOF AND DEMAND FOR JURY TRIAL

Said defendant assumes the burden of proof, and demands a jury trial, on the issue as to the amount of compensation.

FITZGERALD, ABBOTT &
BEARDSLEY,
Attorneys for Defendant,
Joseph Faria, Jr.

Received copy of the foregoing answer, notice and demand January 16, 1946.

M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General,
Attorney for Plaintiff.

[Endorsed]: Filed Jan. 18, 1946. [34]

[Title of District Court and Cause.]

AMENDMENT TO ANSWER OF DEFENDANT
JOSEPH FARIA, JR.

Now comes the defendant Joseph Faria, Jr., and hereby amends the Answer heretofore filed by him to Plaintiff's Amended Complaint, in the following particulars, viz:

Said defendant amends Paragraphs 3 and 4 and the prayer of his said Answer so that said Para-

graphs 3 and 4 and said prayer shall read as follows, to-wit:

3. Said defendant alleges that on the date possession was taken by plaintiff, namely, July 24, 1944, the actual value of said leasehold interest and estate taken by plaintiff was as follows: [35]

(a)	Part taken in Parcel 3A	\$20,975.00
(b)	Part taken in Parcel 59	17,575.00
(c)	Part taken in Parcel 64	175.00

Total \$38,725.00

4. Said leasehold interest and estate in the real property described in paragraph 2 hereof constitutes the larger parcel of which the part taken is a part; said defendant alleges damages to the portion of said leasehold interest and estate not taken, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by plaintiff, in the sum of \$31,850.00.

Wherefore, said defendant prays judgment, if said property is condemned as sought by plaintiff, for the sum of \$70,575.00, together with interest thereon, at the rate of 6% per annum, from July 24, 1944.

A. J. SCAMPINI,
WALTER E. HETTMAN,
HERBERT CHAMBERLIN,

Attorneys for Defendant,
Joseph Faria, Jr.

United States of America,
Northern District of California,
City and County of San Francisco—ss.

Joseph Faria, Jr., being first duly sworn, deposes and says:

That he is the defendant who files the foregoing Amendment to Answer; that he has read said Amendment to Answer and it is true of his own knowledge.

JOSEPH FARIA, JR.

Subscribed and sworn to before me this 14th day of August, 1946.

[Seal] MARY T. COLLINS,

Notary Public in and for the City and County of
San Francisco, State of California.

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed Aug. 22, 1946. [36]

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT
CAL-BAY CORPORATION

Defendant, Cal-Bay Corporation, answers the complaint herein as follows:

1. At the time of the commencement of this action, said defendant, a California corporation, was, ever since has been, and now is, the owner of a leasehold interest and estate, in the hereinafter

designated portions of the real property sought to be condemned, under oil and gas leases executed by the holders of the fee simple title thereto, under the terms of which leases said defendant had the exclusive right of exploring, mining and operating thereon for oil, gas and casinghead gas, and other hydrocarbon substances, and taking, storing, removing and disposing of same, and manufacturing gasoline and other products therefrom, with the right for such purposes to the free use of oil, gas and water [37] thereon, but no from Lessors' water wells or ponds, and the right to build tanks, power houses, stations, houses for employees and such other structures (excepting refinery) as might be necessary or convenient in its operations, together with rights-of-way, easements and servitudes for pipe lines, power lines, telephone and telegraph lines, with the right of removing any and all improvements placed or erected thereon by Lessee, including the right to pull all casing, for terms extending to the years 1961 and 1962 (the exact dates being as set forth in paragraph 2 hereof), and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced thereon in quantities deemed paying by Lessee.

2. The real property subject to said leasehold interest and estate is situate in Contra Costa County, California, and described as follows:

(a) The southwest quarter (SW $\frac{1}{4}$) of Section Fifteen (15), the north half (N $\frac{1}{2}$) of the

northeast quarter ($NE\frac{1}{4}$) of Section Twenty-one (21), and the North half ($N\frac{1}{2}$) of the northwest quarter ($NW\frac{1}{4}$) of Section Twenty-two (22), all in Township Two (2) north, of Range one (1) west, Mt. Diablo Meridian,

leased from Manuel V. Alvernaz and wife, the certain term thereunder extending to March 3, 1962;

(b) A TR of LD BD N & E BY LD of Anton Faria S by LD of Blume et al W by LD of John Faria, being a por. of $NW\frac{1}{4}$ of Sec. 21 T2N, R1W Contg. 4.96 Ac.,

leased from Mae E. Dutra, the certain term thereunder extending to August 11, 1961;

(c) Lot 2 Sec. 21 T2N, R1W, 38.72 ac.

Por. Lot 1 & $SE\frac{1}{4}$ of $NW\frac{1}{4}$ of Sec. 21 T2N, R1W, 76.64 ac. $S\frac{1}{2}$ of $NE\frac{1}{4}$ of Sec. 21 T2N, R1W & W 12 ac. of $S\frac{1}{2}$ of $NW\frac{1}{4}$ of Sec. 22 T2N, R1W, 92 ac.

Lot 3 & Fract'l $SE\frac{1}{4}$ of Sec. 21 T2N, R1W, 155.51 ac. $N\frac{1}{2}$ of $NW\frac{1}{4}$ of Sec. 21, T2N, R1W, 80 ac. and containing 440.87 acres, more or less.

Except that part of the $S\frac{1}{2}$ of $SE\frac{1}{4}$ of Sec. 21 which is a part of Lot 3, and amounting to 73.51 acres, leased from Mary Faria, the certain term thereunder extending to August 11, 1961;

(d) Portion of the southwest $\frac{1}{4}$ of the

northwest $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, containing 5 acres, more or less, described as follows:

Beginning at a point which bears north $2^{\circ} 33'$ west, 43.51 feet from a concrete monument in the easterly line of the Rancho Monte Del Diablo, which monument is the most northerly corner of the parcel of land described in the deed of trust from Joseph Williams, Jr., et ux, to Willard D. Ellis, et al., trustees for the Federal Land Bank of Berkeley, dated January 1, 1934, and recorded January 23, 1934, in Volume 353 of Official Records, at page 312; thence from said point of beginning north $30^{\circ} 10'$ east 570.68 feet; thence south $46^{\circ} 15'$ east 392.48 feet; thence south $30^{\circ} 10'$ west 570.58 feet; thence north $46^{\circ} 15'$ west 392.48 feet to the point of beginning,

leased from Edward Faria, the certain term thereunder extending to August 11, 1961.

3. Said defendant alleges actual values of said leasehold interest and estate taken by plaintiff, as follows:

(a)	Part taken in Parcel 57	\$ 3,850.00
(b)	Part taken in Parcel 58	\$ 3,900.00
(c)	Part taken in Parcel 59	\$461,000.00
Total		<hr/> \$468,750.00

4. Said leasehold interest and estate in the real property described in paragraph 2 hereof constitutes the larger parcel of which the part taken is a part; said defendant alleges damages to the portion of said leasehold interest and estate not taken, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by plaintiff, in the sum of \$150,000.00.

5. Said defendant having been permitted, by stipulation of the parties, to retain possession of the portion of its leasehold interest and estate within Parcels 58 and 59, and to carry on its drilling and other operations thereon, until January 15, 1945, the values herein alleged as applicable to said Parcels are the values as of said date; the other value is the value as of the date of the [39] taking of possession by the plaintiff, namely, July 24, 1944.

Wherefore, said defendant prays judgment, if said property is condemned as sought by plaintiff, for the sum of \$618,750.00, together with interest at the rate of 6 per cent per annum from July 24, 1944, on the sum awarded, applicable to Parcel 57, and from January 15, 1945, as to the remainder of said award.

A. J. SCAMPINI,
WALTER HETTMAN,
HERBERT CHAMBERLIN,

Attorneys for Defendant.

United States of America,
Northern District of California,
County of Contra Costa—ss.

Joseph Faria, Jr., being first duly sworn, deposes and says: that he is president of defendant, Cal-Bay Corporation, which files the foregoing answer; that he has read said amended answer and it is true of his own knowledge.

JOSEPH FARIA, JR.

Subscribed and sworn to before me this 31st day of December, 1946.

[Seal]

MITA A. CHESELDINE,

Notary Public in and for said Contra Costa County,
California.

My commission expires Jan. 25, 1949.

NOTICE OF ASSUMPTION OF BURDEN OF
PROOF AND DEMAND FOR JURY TRIAL

Said defendant assumes the burden of proof, and demands a jury trial on the issue as to the amount of compensation.

A. J. SCAMPINI,
WALTER HETTMAN,
HERBERT CHAMBERLIN,

Attorneys for Defendant.

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed Jan. 6, 1947. [40]

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT
MAE E. ROCHE

Now comes the defendant Mae E. Roche, and answers the complaint herein as follows:

1. On July 22, 1944, on which date the complaint of the plaintiff was filed in this action and summons issued, this defendant was the owner in fee simple absolute of the following described real property lying and being in the County of Contra Costa, State of California, and more particularly described as follows, to wit:

Beginning at a point on the Northerly boundary line of Rancho Monte del Diablo where said line is intersected by the Westerly line of Section 21, Township 2 North, Range 1 West, thence running along the Westerly boundary line of Section 21, North 689.97 feet to a point; thence leaving the westerly boundary of Section [41] 21, South 74° 53' East, 333.40 feet to a point; thence South 0° 47½' East, 351.38 feet to a point; thence South 72° 31' East, 29.97 feet to a point; thence South 28° 35' West, 430.40 feet to a point in fence line and Northerly boundary line of Rancho Monte del Diablo; thence along said fence and boundary line North 47° 49' West, 201.53 feet to the point of beginning. Containing 4.96 acres and being a portion of the Northwest quarter of Section 21, Township 2 North, Range 1 West, and this

being the same property transferred by deed dated December 3, 1927, from Antone Faria, et ux, to Frank J. Dutra.

Said parcel of land is designated as "Parcel 57" in plaintiff's complaint as amended and filed herein.

2. At the time of the commencement of this action on July 22, 1944, this defendant was the owner in connection with said Parcel 57 of mineral rights set forth in the following instruments:

(a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 643 of Official Records of Contra Costa County, at page 10;

(b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 21;

(c) An instrument dated April 28, 1942, and recorded August 17, 1942, in Volume 628 of Official Records of said Contra Costa County, at page 278;

(d) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of said Contra Costa County, at page 488;

(e) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 23; [42]

(f) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of Official Records of said Contra Costa County, at page 473.

3. Said mineral rights of this defendant were taken from her by plaintiff on July 24, 1944, and at the time of said taking the actual value thereof was the sum of \$3,500.

4. On March 1, 1945, plaintiff and this defendant entered into a written stipulation approved by the above entitled Court whereunder and whereby plaintiff agreed to pay and did pay this defendant the sum of \$15,000 as full, adequate and just compensation for taking of said Parcel 57 excepting the said mineral rights of this defendant.

Wherefore, this defendant prays that she be awarded just compensation herein and to that end, that this defendant be awarded the value of the mineral rights of this defendant in said Parcel 57 sought to be condemned and taken by the plaintiff, namely, the sum of \$3,500; and further, that this defendant be awarded judgment for interest as provided by law, and for costs of suit herein incurred, and for such other and further relief as to the Court may seem meet and proper in the premises.

/s/ A. J. SCAMPINI,

/s/ WALTER HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

NOTICE OF ASSUMPTION OF BURDEN OF
PROOF AND DEMAND FOR JURY TRIAL

Said defendant assumes the burden of proof, and demands a jury trial on the issue as to the amount of compensation. [43]

/s/ A. J. SCAMPINI,

/s/ WALTER HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

Received copy of the foregoing amended answer, notice and demand. January 6, 1947.

M. MITCHELL BOURQUIN,

Special Assistant to the
Attorney General,

Attorney for Plaintiff.

State of California,
County of Contra Costa—ss.

Mae E. Roche, being first duly sworn, deposes and says:

That she is the defendant in the above entitled action; that she has read the foregoing Amended Answer and knows the contents thereof; that the same is true of her own knowledge, except as to those matters therein stated on information and be-

lief, and that as to those matters, she believes it to be true.

MAE E. ROCHE.

Subscribed and sworn to before me this 31st day of December, 1946.

[Seal] N. E. GRAHAM,

Notary Public in and for the County of Contra Costa, State of California.

My commission expires August 10, 1947.

[Endorsed]: Filed Jan. 6, 1947. [44]

[Title of District Court and Cause.]

AMENDED ANSWER OF MARIA FARIA,
ALSO KNOWN AS MARY FARIA

Now comes the defendant, Maria Faria, also known as Mary Faria, and does hereby amend the answer heretofore filed by her in the above entitled cause and states as follows:

1. On July 22, 1944, on which date the complaint of the plaintiff was filed in this action and summons was caused to be issued, this defendant was the owner in fee simple absolute of the following described real property, lying and being in the County of Contra Costa, State of California, and more particularly described as follows, to wit:

(A) Lots 1, 2 and 3, the Southeast quarter of the Northwest quarter; the North half of the

Northwest quarter; the Southeast quarter of the Southeast quarter; the North half of the Southeast quarter, and the South half of the Northeast quarter of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian. [45]

(B) A portion of the Southwest quarter of the Northwest quarter of Section 22, Township 2 North, Range 1 West, Mt. Diablo Base & Meridian, described as follows:

Commencing at the Southwest corner of said Southwest quarter of the Northwest quarter of said Section 22; thence Northeasterly in a direct line to a point on the North line of said Southwest quarter of the Northwest quarter of Section 22, distant East 48.00 rods from the Northwest corner of said Southwest quarter of the Northwest quarter of said Section 22; thence West along the said Northerly line, 48.00 rods to the Northwest corner of the Southwest quarter of the Northwest quarter of Section 22; thence South along the West line of said Northwest quarter of said Section 22, to the place of commencement.

saving and excepting from the property described under (A) the following pieces and parcels of land, to wit:

(1) That certain parcel described in deed dated May 2, 1940, executed by Mary Faria to Mae E. Dutra, recorded February 24, 1941, in Book 587 of Official Records, page 51, Records

of Contra Costa County, State of California, described as follows:

Beginning at a point on the Northerly boundary line of Ranch Monte del Diablo where said line is intersected by the Westerly line of Section 21, Township 2 North, Range 1 West, thence running along the Westerly boundary line of Section 21, North 689.97 feet to a point; thence leaving the westerly boundary of Section 21, South $74^{\circ} 53'$ East, 333.40 feet to a point; thence South $0^{\circ} 47\frac{1}{2}'$ East, 351.38 feet to a point; thence South $72^{\circ} 31'$ East, 29.97 feet to a point; thence South $28^{\circ} 35'$ West, 430.40 feet to a point in fence line and Northerly boundary line of Rancho del Diablo; thence running along said fence and boundary line North $47^{\circ} 49'$ West, 201.53 feet to the point of beginning. Containing 4.96 acres and being a portion of the Northwest quarter of Section 21, Township 2 North, Range 1 West, and this being same property transferred by deed dated December 3, 1927, from Antone Faria, et ux, to Frank J. Dutra.

(2) Portion of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mt. Diablo Base & Meridian, containing 5.00 acres, more or less, described as follows:

Beginning at a point which bears North $2^{\circ} 33'$ West 43.51 feet from a concrete monument in the Easterly line of the Rancho del Diablo, which monument is the most Northerly corner

of parcel described in the Deed of Trust from Joseph Williams, [46] Jr., et ux, to Willard D. Ellis, et al, trustees for the Federal Land Bank of Berkeley, dated January 1, 1934, recorded January 23, 1934, in Book 353, of Official Records, page 312; thence from said point of beginning, North $30^{\circ} 10'$ East 570.68 feet; thence South $46^{\circ} 15'$ East 392.48 feet; thence South $30^{\circ} 10'$ West 570.68 feet; thence North $46^{\circ} 15'$ West 392.48 feet to the point of beginning.

(3) That certain parcel of land conveyed to Joseph S. Williams, Jr., by deed executed by Antone Faria, dated April 21, 1907, recorded April 21, 1911, in Book 162 of Deeds, page 562, described as follows:

Beginning at a station post in the division fence between the lands belonging to the party of the first part in the Southwest $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mt. Diablo Base & Meridian, and lands of J. S. Williams, Jr., known as the Fernandez Ranch in the Rancho Monte del Diablo; thence North $65\frac{3}{4}^{\circ}$ East 284.4 feet to station; thence South $29\frac{1}{4}^{\circ}$ East to and crossing a creek that runs from near Antone Faria's dwelling 122 feet to station; thence South $54\frac{1}{2}^{\circ}$ West 229.00 feet to station in aforesaid boundary between Antone Faria and J. S. Williams, Jr., thence North $47\frac{1}{2}^{\circ}$ West along said boundary at 112.00 feet crossing said creek, 173.00 feet to the point of beginning. Containing 0.84 acre, more or less.

All of said parcels above described are contiguous to each other and together they aggregate 440.87 acres, more or less.

2. By the complaint filed in this cause, the plaintiff sought to condemn, and on January 15, 1945, the plaintiff did take possession of 272.70 acres, more or less, of said 440.87 acres tract, to wit: That portion described under and as "Parcel 59" in plaintiff's complaint, as amended. This defendant denied that said portion sought to be condemned and so taken, as aforesaid, by the plaintiff, namely, said Parcel 59, does not constitute part of a larger parcel belonging to this defendant, but in truth and in fact, this defendant alleges that said parcel of land sought to be condemned and taken by the plaintiff constitutes a part of the larger parcel belonging to this defendant, all as above stated and described.

3. At the time of the commencement of this action on [47] July 22, 1944, and to and including January 15, 1945, this defendant was the owner in connection with said Parcel 59, of mineral rights set forth in the following instruments:

(a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488;

(b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 23;

(c) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of Official Records of Contra Costa County, at page 473.

4. Said mineral rights of this defendant were taken from her by plaintiff on January 15, 1945, and at the time of said taking the actual value thereof was the sum of \$75,000.

5. On March 1, 1945, plaintiff and this defendant entered into a written stipulation approved by the above entitled Court whereunder and whereby plaintiff agreed to pay, and did pay this defendant the sum of \$26,780 as full, adequate and just compensation for the taking of said Parcel 59 excepting the said mineral rights of this defendant.

6. The defendant alleges that damages will accrue to the remaining portion of this defendant's land not sought to be condemned by the plaintiff, to wit: the remaining 168.17 acres, more or less, of said tracts of land, in the sum of \$35,875, by reason of its severance from the portion sought to be condemned and taken by the plaintiff, and by reason of the construction of the improvements thereon in the manner proposed by the plaintiff, and by reason of the use of the portion taken in the manner and for the purposes proposed by the plaintiff.

Wherefore, this defendant prays that she be awarded just compensation herein and to that end that this defendant be awarded the actual value of the mineral rights of this defendant in Parcel 59

sought to be condemned and taken by the plaintiff, namely, the sum of \$75,000; and further, that this defendant be awarded all damages that will accrue to the portion of said larger parcel of land belonging to the defendant which is not sought to be condemned by the plaintiff, to wit: the sum of \$35,875; and that this defendant be awarded judgment for interest as provided by law, and for costs of suit herein incurred, and for such other and further relief as to the Court may seem meet and proper in the premises.

/s/ A. J. SCAMPINI,
/s/ WALTER HETTMAN,
/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

State of California,
County of Contra Costa—ss.

Maria Faria, being first duly sworn, deposes and says: That she is the defendant in the above entitled action; that she has read the foregoing amended answer and knows the contents thereof; that the same is true of her own knowledge except as to those matters therein stated on information and belief, and that as to those matters she believes it to be true.

MARIA FARIA
Her X Mark

Witnesses to mark of Maria Faria:

LEONE N. SMITH,
ELMA M. JACKSON.

Subscribed and sworn to before me this 31st day
of December, 1946.

[Seal] N. E. GRAHAM,

Notary Public in and for the County of Contra
Costa, State of California.

My commission expires August 10, 1947. [49]

NOTICE OF ASSUMPTION OF BURDEN OF
PROOF AND DEMAND FOR JURY TRIAL

Said defendant assumes the burden of proof, and
demands a jury trial on the issue as to the amount
of compensation.

/s/ A. J. SCAMPINI,

/s/ WALTER HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

[Acknowledgment of Receipt of Copy.]

[Endorsed]: Filed Jan. 6, 1947. [50]

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT
EDWARD FARIA

Now comes the defendant Edward Faria, and
answers the complaint herein as follows:

1. On July 22, 1944, on which date the com-
plaint of the plaintiff was filed in this action and

summons issued, this defendant was the owner in fee simple absolute of the following described real property lying and being in the County of Contra Costa, State of California, and more particularly described as follows, to wit:

Beginning at a point which bears North 2° 33' west, 43.51 feet from a concrete monument in the easterly line of the Rancho del Diablo, which monument is the most northerly corner of the parcel of land described in the deed of trust from Joseph Williams, Jr., et ux to Willard D. Ellis, et al., trustees for the Federal Land Bank of Berkeley, dated January 1, 1934, and recorded January 23, 1934, in Volume 353, of Official Records, at page 312; thence from said point of beginning North 30° 10' East 570.68 feet; thence South 46° 15' East 392.48 feet, thence south 30° 10' West 570.68 feet; thence North 46° 15' West 392.48 feet to the point of beginning, and containing 5 acres, more or less. Being a portion of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 21, T. 2 N., R. 1 W., M.D.B.&M.

Said parcel of land is designated as "Parcel 58" in plaintiff's complaint as amended and filed herein. By an order of the above entitled Court duly made and entered herein on September 28, 1944, possession of said premises was taken by plaintiff on January 15, 1945.

2. At the time of the commencement of this action on July 22, 1944, and to and including Jan-

uary 15, 1945, this defendant was the owner in connection with said Parcel 58 of mineral rights set forth in the following instruments:

(a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 18;

(b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 24;

(c) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 674 of Official Records of Contra Costa County, at page 55;

(d) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488;

(e) An instrument dated February 21, 1942, and recorded [52] April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 23;

(f) An instrument dated August 11, 1941, and recorded August 7, 1942, in Volume 672 of Official Records of Contra Costa County, at page 473.

3. Said mineral rights of this defendant were taken from him by plaintiff on January 15, 1945,

and at the time of said taking the actual value thereof was the sum of \$3,500.

4. On March 1, 1945, plaintiff and this defendant entered into a written stipulation approved by the above entitled Court whereunder and whereby plaintiff agreed to pay and did pay this defendant the sum of \$400 as full, adequate and just compensation for the taking of said Parcel 58 excepting the said mineral rights of this defendant.

Wherefore, this defendant prays that he be awarded just compensation herein and to that end that this defendant be awarded the value of the mineral rights of this defendant in said Parcel 58 sought to be condemned and taken by the plaintiff, namely, the sum of \$3,500; and further, that this defendant be awarded judgment for interest as provided by law, and for costs of suit herein incurred, and for such other and further relief as to the Court may seem meet and proper in the premises.

/s/ A. J. SCAMPINI,

/s/ WALTER HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

NOTICE OF ASSUMPTION OF BURDEN OF PROOF AND DEMAND FOR JURY TRIAL

Said defendant assumes the burden of proof, and

demands a jury trial on the issue as to the amount of compensation. [53]

/s/ A. J. SCAMPINI,
/s/ WALTER HETTMAN,
/s/ HERBERT CHAMBERLIN,

Attorneys for Defendant.

Received a copy of the foregoing amended answer, notice and demand. January 6, 1947.

M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General,
Attorney for Plaintiff.

State of California,
County of Contra Costa—ss.

Edward Faria, being first duly sworn, deposes and says:

That he is the defendant in the above entitled action; that he has read the foregoing amended answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein, stated on information and belief, and that as to those matters, he believes it to be true.

EDWARD FARIA.

Subscribed and sworn to before me this 31st day of December, 1946.

[Seal] N. E. GRAHAM,

Notary Public in and for the County of Contra Costa, State of California.

My commission expires August 10, 1947.

[Endorsed]: Filed Jan. 6, 1947. [54]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land in the County of Contra Costa,
et al.,

Defendant.

VERDICT

We, the Jury, find the market value as of July 24, 1944, of the royalty interest of defendant Edward Faria under the leases on parcel 58, to be the sum of \$50.00.

WM. H. OWEN,
Foreman.

[Endorsed]: Filed Feb. 7, 1947. [55]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land in the County of Contra Costa,
et al.,

Defendant.

VERDICT

We, the Jury, find the market value as of July 24, 1944, of the leasehold estate of the defendant Joseph Faria, Jr., in parcels 59 and 64, to be the sum of \$517.00.

We further find the severance damage to the leasehold interest of the defendant Joseph Faria, Jr., not taken by the United States of America to be the sum of \$ None.

WM. H. OWEN,
Foreman.

[Endorsed]: Filed Feb. 7, 1947. [56]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land in the County of Contra Costa,
et al.,

Defendant.

VERDICT

We, the Jury, find the market value as of January 15, 1945, of the leasehold estate of the defendant Cal-Bay Corporation in parcels 57, 58 and 59, to be the sum of \$926.00.

We further find the severance damage to the leasehold estate of the defendant Cal-Bay Corporation not taken by the United States of America to be the sum of \$ None.

WM. H. OWEN,
Foreman.

[Endorsed]: Filed Feb. 7, 1947. [57]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land in the County of Contra Costa,
et al.,

Defendant.

VERDICT

We, the Jury, find the market value as of July 24, 1944, of the royalty interest of defendant Maria Faria under the leases on parcel 59, to be the sum of \$2312.00.

We further find the severance damage to the royalty interest of the defendant Maria Faria not taken by the United States of America to be the sum of \$ None.

WM. H. OWEN,

Foreman.

[Endorsed]: Filed Feb. 7, 1947. [58]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land in the County of Contra Costa,
et al.,

Defendant.

VERDICT

We, the Jury, find the market value as of July 24, 1944, of the royalty interest of defendant Mae E. Roche under the leases on parcel 57, to be the sum of \$60.00.

WM. H. OWEN,
Foreman.

[Endorsed]: Filed Feb. 7, 1947. [59]

In the District Court of the United States, in and
for the Northern District of California, South-
ern Division

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 Acres of Land, more or less, situated in the
County of Contra Costa, State of California,
W. J. VON HECKEREN, et al.,

Defendants.

REQUESTED INSTRUCTIONS FOR
DEFENDANTS

Now come the defendants, Cal-Bay Corporation, Joseph Faria, Jr., Maria Faria, Edward Faria and Mae E. Roche, and hereby request the Court to instruct the jury in the above-entitled cause by giving to the jury the following appended instructions submitted to the Court on this 24th day of January, 1947, and prior to the taking of testimony in this action and in compliance with Rule 15 of the Rules and Practice [60] of the United States District Court, in and for the Northern District of California.

At the conclusion of the evidence or during the trial of this cause, the defendants reserve the right and respectfully request the Court for the right and privilege to propose additional instructions as

they deem necessary, and which they were unable to prepare in advance of the trial, or to anticipate with reference to the introduction of certain evidence.

A. J. SCAMPINI,
WALTER HETTMAN,
HERBERT CHAMBERLIN,

Attorneys for Defendants.

Defendant's Instruction No. 1

Ladies and Gentlemen of the Jury:

It becomes my duty as Judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

(BAJI #1)

Given

Refused [62]

Defendants' Instruction No. 2

This is a proceeding in eminent domain; that is, a proceeding whereby the United States of America

seeks to condemn and appropriate to public use certain private property.

Given

Refused [63]

Defendants' Instruction No. 3

The plaintiff in this action is the United States of America. The terms "Plaintiff," "United States of America," "United States" and "Government," as used in these instructions, will mean one and the same party.

Given

Refused [64]

Defendants' Instruction No. 4

There are five defendants in the action, namely, Cal-Bay Corporation, Joseph Faria, Jr., Maria Faria, Edward Faria, and Mae E. Roche. Each seeks to recover compensation for property allegedly condemned and appropriated by the plaintiff in this action. Each is entitled to a separate verdict at your hands.

Given

Refused [65]

Defendants' Instruction No. 5

In a proceeding in eminent domain neither the court nor the defendants have any power or discretion to prevent the property from being taken.

When the action is filed the conclusion of the executive or administrative branch of the Government to the effect that it is necessary for the property to be taken is final and conclusive; they are the sole judges of such necessity.

(Oakland v. United States, 9 Cir., 124 F. (2d) 759.)

Given

Refused [66]

Defendants' Instruction No. 6

The fact that the plaintiff in this action is the United States of America should not influence you in any way in arriving at your verdict. You should regard this case as though the parties before you were two individuals, each of whom is entitled to receive equal justice at your hands.

(E. C. Shevlin Co. v. United States, 9 Cir., 146 F. (2d) 613, 615.)

Given

Refused [67]

Defendants' Instruction No. 7

The action as filed involved 5430 acres, more or less, situated in the County of Contra Costa, and comprised a number of parcels owned by separate individuals. For convenience in reference the parcels were separately numbered.

Given

Refused [68]

Defendants' Instruction No. 8

In connection with parcel numbered 57, the defendant, Cal-Bay Corporation, seeks compensation in the sum of \$3,850.00 for the taking of its leasehold interest.

In connection with parcel numbered 58, the said defendant seeks compensation in the sum of \$3,900.00 for the taking of its leasehold interest; and in connection with parcel numbered 59, the said defendant seeks compensation in the sum of \$461,000.00 for the taking of its leasehold interest; to-wit, a total of \$468,750.00.

The said defendant, Cal-Bay Corporation, also seeks compensation in the sum of \$150,000.00 for severance damages.

Given

Refused [69]

Defendants' Instruction No. 9

In connection with parcel numbered 3A, the defendant, Joseph Faria, Jr., seeks compensation in the sum of \$20,975.00 for the taking of his leasehold interest.

In connection with parcel numbered 59, the said defendant seeks compensation in the sum of \$15,575.00 for the taking of his leasehold interest; and in connection with parcel numbered 64, the said defendant seeks compensation in the sum of \$175.00

for the taking of his leasehold interest; to-wit, the total sum of \$38,725.00.

The said defendant, Joseph Faria, Jr., also seeks compensation in the sum of \$31,850.00 for severance damages.

Given

Refused [70]

Defendants' Instruction No. 10

In connection with parcel numbered 59, the defendant, Maria Faria, seeks compensation in the sum of \$75,000 for the taking of mineral rights set forth in the following instruments:

- (a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488;
- (b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 23;
- (c) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of Official Records of Contra Costa County, at page 473.

The said defendant, Maria Faria, also seeks compensation in the sum of \$35,875 for severance damages.

Given

Refused [71]

Defendants' Instruction No. 11

In connection with parcel numbered 58, the defendant, Edward Faria, seeks compensation in the sum of \$3,500 for the taking of mineral rights set forth in the following instruments:

- (a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 18;
- (b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 24;
- (c) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 674 of Official Records of Contra Costa County, at page 55;
- (d) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488;
- (e) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 23;
- (f) An instrument dated August 11, 1941, and recorded August 7, 1942, in Volume 672 of Official Records of Contra Costa County, at page 473.

Given

Refused [72]

Defendants' Instruction No. 12

In connection with parcel numbered 57, the defendant, Mae E. Roche, seeks compensation in the sum of \$3,500 for the taking of mineral rights set forth in the following instruments:

- (a) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 643 of Official Records of said Contra Costa County, at page 10;
- (b) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 21;
- (c) An instrument dated April 28, 1942, and recorded August 17, 1942, in Volume 628 of Official Records of said Contra Costa County, at page 278;
- (d) An instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of said Contra Costa County, at page 488;
- (e) An instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 23;
- (f) An instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of

Official Records of said Contra Costa County,
at page 473.

Given

Refused [73]

Defendants' Instruction No. 13

The Fifth Amendment of the Constitution of the United States provides that private property shall not be taken for public use without just compensation. Just compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good condition pecuniarily as he would have occupied if his property had not been taken.

(United States v. Miller, 317 U. S. 369, 373,
63 S. Ct. 276, 279, 280, 87 L. Ed. 336.)

Given

Refused [74]

Defendants' Instruction No. 14

Just compensation includes all elements of value that in here in the property, but it does not exceed market value fairly determined. The sum required to be paid the owner does not depend upon the uses to which he has devoted his property but is to be arrived at upon just consideration of all the uses for which it is suitable. The highest and most profitable use for which it is adaptable and needed, or likely to be needed in the reasonably near future, is to be considered not necessarily as the measure

of market value, but to the full extent that the prospect or demand for such use affects the market value while the property is privately held.

(*Olson v. United States*, 292 U. S. 246, 255, 54 S. Ct. 704, 708-9, 78 L. Ed. 1236.)

Given

Refused [75]

Defendants' Instruction No. 15

Just compensation means market value fairly determined.

(*United States v. Powelson*, 319 U. S. 266, 275, 63 S. Ct. 1047, 1052, 87 L. Ed. 1390.)

Given

Refused [76]

Defendants' Instruction No. 16

Market value is what a willing buyer would pay in cash to a willing seller.

(*United States v. Miller*, 317 U. S. 369, 375, 63 S. Ct. 276, 280, 87 L. Ed. 336.)

Given

Refused [77]

Defendants' Instruction No. 17

Where, for any reason, property has no market, resort must be had to other data to ascertain its value.

(United States v. Miller, 317 U. S. 369, 374,
63 S. Ct. 276, 280, 87 L. Ed. 336.)

Given

Refused [78]

Defendants' Instruction No. 20

If only a part of an owner's property is taken and the part not taken is left in such shape or condition to be in itself of less value than before, the owner is entitled to additional damages on that account. Such incidental or severance damage is a part of the whole damage suffered by the owner upon the taking. The burden of proving the damage suffered is upon such owner.

(United States v. Acres of Land, D.C.-Cal.
41, F. Supp. 30, 32.)

Given

Refused [79]

Defendants' Instruction No. 21

In civil actions, and a proceeding in eminent domain is a civil action, the party who asserts the affirmative of an issue must carry the burden of proving it. In other words, the "burden of proof" as to that issue is on that party. This means that if no evidence were given on either side of such issue, your finding as to it would have to be against that party. When the evidence is contradictory, the decision must be made according to the preponderance of evidence, by which is meant such evidence

as when weighed with that opposed to it has more convincing force, and from which it results that the greater probability of truth lies therein. Should the conflicting evidence be evenly balanced in your minds, so that you are unable to say that the evidence on either side of the issue preponderates, then your finding must be against the party carrying the burden of proof, namely, the one who asserts the affirmative of the issue.

(BAJI #21—Adapted)

Given

Refused [80]

Defendants' Instruction No. 22

While it is incumbent upon one who asserts the affirmative of an issue, thus having the burden of proof, to prove his allegations by a preponderance of the evidence, this rule does not require demonstration; that is, such degree of proof as, excluding all possibility of error, produces absolute certainty, because such proof is rarely possible.

In a civil action such as the one we are now trying, it is proper to find that a party has succeeded in carrying his burden of proof on an issue of fact, if the evidence favoring his side of the question is more convincing than that tending to support the contrary side, and if it causes the jurors to believe

that at that time the probability of such losses was small.

Excluded [13-15]

Objection

Sustained [18]

Defendants' Instruction No. 23

In this case the burden of proving the value of the property taken is on the defendants.

(United States v. Foxworth, 319 U. S. 266, 373 G. S. 47, 114 S. 1032 87 L. Ed. 1290.)

Objection

Sustained [21]

Defendants' Instruction No. 24

You are instructed that for the purposes of this case the date of taking shall be accepted by you as January 23, 1943.

Objection

Sustained [24]

Defendants' Instruction No. 25

You are not bound to decide in conformity with the testimony of a number of witnesses which does not produce conviction in your mind, as against the assertion of a lesser number or a presumption, or other evidence, which appears to your mind with more convincing force. This rule of law does not mean that you are at liberty to disregard the testi-

many of the greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

(BAJI =24)

Given

Refused [84]

Defendants' Instruction No. 26

In judging the credibility of witnesses, you shall have in mind the law that a witness is presumed to speak the truth. This presumption, however, may be overcome by contradictory evidence, by the manner in which the witness testified, by the character of his testimony, or by evidence that pertains to his motives.

(BAJI =26)

Given

Refused [85]

Defendants' Instruction No. 27

A witness false in one part of his or her testimony is to be distrusted in others: that is to say, you may reject the whole testimony of a witness who wilfully has testified falsely as to a material

point, unless from all the evidence you shall believe that the probability of truth favors his or her testimony in other particulars.

(BAJI #27)

Given

Refused [86]

Defendants' Instruction No. 28

The rules of evidence ordinarily do not permit the opinion of a witness to be received in evidence. An exception to this rule exists in the case of expert witnesses. A person who by education, study and experience has become an expert in any art, science or profession, and who is called as a witness, may give his opinion as to any such matter in which he is versed and which is material to the case. You should consider such expert opinion and should weigh the reasons, if any, given for it.

(BAJI #33)

Given

Refused [87]

Defendants' Instruction No. 29

You must resolve any conflict that may exist in the testimony of expert witnesses. To that end, you must weigh one expert's opinion against that of another, the reasons given by one against those of another, and the relative credibility and knowledge of the experts who have testified. Thereupon, you

shall find in favor of that expert testimony which, in your opinion, is entitled to the greater weight.

(BAJI #33-A—Adapted)

Given

Refused [88]

Defendants' Instruction No. 30

At times throughout the trial the court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings, and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the court does not determine what weight should be given such evidence, nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been, or as to the reason for the objection.

(BAJI #3)

Given

Refused [89]

Defendants' Instruction No. 31

If during this trial I have said or done anything

which has suggested to you that I am inclined to favor the claims or position of either party, you will not suffer yourself to be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are, or are not, worthy of belief; what facts are, or are not, established; or what inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

(BAJI #5)

Given

Refused [90]

Defendants' Instruction No. 32

If in these instructions any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and to regard each in the light of all the others.

(BAJI #2)

Given

Refused [91]

Defendants' Instruction No. 33

It is your duty as jurors to consult with one another, and to deliberate, with a view to reaching an agreement, if you can do so without violence to your individual judgment. You must each decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you, by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict, or solely because of the opinion of the other jurors.

(BAJI #)

Given

Refused [92]

Defendants' Instruction No. 34

If you find a verdict in favor of the defendant, Cal-Bay Corporation, you will award said defendant just compensation for the taking of its leasehold interest in parcels numbered 57, 58 and 59; separately assessing the same; and also just compensation for severance damages.

Given

Refused [93]

Defendants' Instruction No. 35

If you find a verdict in favor of the defendant, Joseph Faria, Jr., you will award said defendant just compensation for the taking of his leasehold interest in parcels numbered 3A, 59 and 64, separately assessing the same, and also just compensation for severance damages.

Given

Refused [94]

Defendants' Instruction No. 36

If you find a verdict in favor of the defendant, Maria Faria, you will award her just compensation for the taking of her mineral rights in parcel numbered 59, and also just compensation for severance damages.

Given

Refused [95]

Defendants' Instruction No. 37

If you find a verdict in favor of the defendant, Edward Faria, you will award him just compensation for the taking of his mineral rights in parcel numbered 58.

Given

Refused [96]

Defendants' Instruction No. 38

If you find a verdict in favor of the defendant,

Mae E. Roche, you will award her just compensation for the taking of her mineral rights in parcel numbered 57.

Given

Refused [97]

Defendants' Instruction No. 39

In any verdict or verdicts you may render for the defendants, or any of them, you shall add the words "together with interest at the rate of six per cent (6%) per annum from January 15, 1945."

(*Jacobs v. United States*, 290 U. S. 13, 16, 54 S. Ct. 26, 28, 78 L. Ed. 142.)

Given

Refused [98]

Defendants' Instruction No. 7 (Reframed)

This action by the United States of America is in eminent domain, by which the Government took possession and title to certain lands in Contra Costa County near Port Chicago and has proceeded to construct thereon a naval ammunition depot. The lands and mineral rights taken by the Government comprise a number of different interests held or owned by the various defendants.

These interests are those of defendant Cal-Bay Corporation which held certain leases for the development of the gas and oil rights; certain leases held by defendant Joseph Faria, Jr., for the development of oil and gas rights, and then also the

royalty interests in said leases retained by other defendants who were the owners of the lands. Finally, also there are the interests and claims of both the lessors and lessees of said gas and oil rights in those lands of which a portion only was taken by the Government and the balance was therefore damaged by such taking. Such damage is known as "severance damage."

It will be your duty, as jurors, to determine the fair market value of the property at the time of the taking of the leases for the development of said gas and oil rights, and also the fair market value of the royalties reserved to the lessors, and then the damage known as "severance damages" in the taking.

These parcels of land are set forth in the complaint and exemplified on the maps in evidence as Parcels 57, 58, 59 and 64.

(Section 1248, C.C.P.)

Given

Refused [99]

Defendants' Instruction No. 8 (Reframed)

The claims for damages by defendant Cal-Bay Corporation as lessee in certain gas and oil leases, providing for 87½ per cent of the production to be retained by defendant Cal-Bay Corporation, may be stated as follows:

(1) Lease dated August 11, 1941, for 20 years from Mary Faria, lessor, for Parcel 59, comprising

367.36 acres. The Government by these proceedings took 208.83 acres, leaving 158.53 acres not taken. Defendant Cal-Bay Corporation claims damages for the loss or fair market value of the gas and oil rights under said lease for the acreage taken by the Government on January 15, 1945, in the amount of \$461,000.

(2) Lease dated August 11, 1941, for 20 years from Edward Faria, lessor, for Parcel 58, comprising 5 acres, all of which was taken by the Government in these proceedings. Defendant Cal-Bay Corporation claims damages for the loss or fair market value of the gas and oil rights under said lease for the acreage taken by the Government on January 15, 1945, in the amount of \$3,900.

(3) Lease dated August 11, 1941, for 20 years from Mae E. Dutra Roche, lessor, for Parcel 57, comprising 4.96 acres, all of which was taken by the Government in these proceedings. Defendant Cal-Bay Corporation claims damages for the loss or fair market value of the gas and oil rights under said lease for the acreage taken by the Government on July 24, 1944, in the amount of \$3,850.

(4) Lease dated March 3, 1942, for 20 years from M. V. Alvarnaz, lessor, being a part of Parcel 59, comprising 310 acres. Said property adjoins the property of Mary Faria at the north. No part of said 310 acres was [100] taken by the Government, but severance damages are claimed as hereinafter stated.

(5) Defendant Cal-Bay Corporation claims damages known as severance damages to the remaining lease interests in the 158.53 acres of Mary Faria not taken by the Government and in the 310 acres of M. V. Alvarnaz not taken by reason of being severed from the part taken by the Government in the sum of \$150,000.

(6) Total damages claimed by defendant Cal-Bay Corporation is the total of said damages for the loss of said gas and oil rights and said severance damages, or a total of \$618,750.

(Sec. 1248 C.C.P.; City of Los Angeles v. Pomeroy, 124 Cal. 597; Spring Valley Water Co. v. Drinkhouse, 92 Cal. 528.)

Given

Refused [101]

Defendants' Instruction No. 9 (Reframed)

The claim for damages by defendant Joseph Faria, Jr., as lessee in certain gas and oil leases, providing for 87½ per cent of the production reserved to him may be stated as follows:

(1) Lease dated August 11, 1941, for 20 years from Mary Faria, lessor, for part of Parcel 59, comprising 73.51 acres. The Government by these proceedings took 63.91 acres, leaving 9.6 acres not taken. Defendant Joseph Faria, Jr., claims damages for the loss or fair market value of the gas and oil rights under said lease for the acreage taken by

the Government on July 24, 1944, in the amount of \$17,575.

(2) Lease dated December 23, 1941, for 20 years, from Geraldine Faria, lessor, for Parcel 64, comprising 228.55 acres, which lands adjoin the property of Mary Faria at the north. The Government by these proceedings took 0.65 acres, leaving 277.90 acres not taken. Defendant Joseph Faria, Jr., claims damages for the loss or fair market value of the gas and oil rights under said lease for the acreage taken by the Government on July 24, 1944, in the amount of \$175.

(3) Defendant Joseph Faria, Jr., claims damages known as severance damages to the remaining lease interests in the 9.6 acres of Mary Faria not taken by the Government and in the 227.90 acres of Geraldine Faria not taken by reason of being severed from the part taken by the Government in the sum of \$31,850.

(4) Total damages claimed by defendant Joseph Faria, Jr., is the total of said damages for the loss of [102] said gas and oil rights and said severance damages, or a total of \$49,600.

(Sec. 1248 C.C.P.; *City of Los Angeles v. Pomeroy*, 124 Cal. 597; *Spring Valley Water Co. v. Drinkhouse*, 92 Cal. 528.)

Given

Refused [103]

Defendants' Instruction No. 10 (Reframed)

The claim for damages by defendant Mary Faria, as lessor, for loss of royalties on certain gas and oil leases, providnig for 12½ per cent of the production reserved to her may be stated as follows:

(1) Lease dated August 11, 1941, for 20 years to Joseph Faria, Jr., in Parcel 59 comprising 440.87 acres, a portion of said lease having been assigned to defendant Cal-Bay Corporation comprising 367.36 acres, and leaving remaining to Joseph Faria, Jr., 73.51 acres under said lease. Of the 440.87 acres owned by Mary Faria and embraced within her said lease, the Government took 208.83 acres from the lease held by defendant Cal-Bay Corporation and 63.91 acres held by defendant Joseph Faria, Jr. Defendant Mary Faria claims damages for the loss or fair market value of royalties in the gas and oil rights under said lease in the 272.74 acres taken by the Government from defendant Cal-Bay Corporation, lessee, and defendant Joseph Faria, Jr., lessee, in the sum of \$75,000.

(2) Defendant Mary Faria claims damages known as severance damages to the remaining royalty interests in the 168.13 acres not taken by the Government by reason of being severed from the part taken by the Government in the sum of \$35,875.

(3) Total damages claimed by defendant Mary Faria is the total of said damages for the loss of royalties on certain oil and gas leases and said severance damages, or a total of \$110,875.

(Sec. 1248 C.C.P.; City of Los Angeles v. Pomeroy, 124 Cal. 597; Spring Valley Water Co. v. Drinkhouse, 92 Cal. 528.)

Given

Refused [104]

Defendants' Instruction No. 11 (Reframed)

The claim for damages of Edward Faria, as lessor, for loss of royalties on certain gas and oil leases, providing for 12½ per cent of the production reserved to him may be stated as follows:

(1) Lease dated August 11, 1941, for 20 years to Cal-Bay Corporation, lessee, in Parcel 58 comprising 5 acres. The Government took all of said 5 acres in these proceedings. Edward Faria claimed damages for the loss or fair market value of his royalties for gas and oil rights under said lease in the sum of \$3,500.

(Sec. 1248 C.C.P.; City of Los Angeles v. Pomeroy, 124 Cal. 597; Spring Valley Water Co. v. Drinkhouse, 92 Cal. 528.)

Given

Refused [105]

Defendants' Instruction No. 12 (Reframed)

The claim for damages of Mae E. Dutra Roche, as lessor, for loss of royalties on certain gas and oil leases, providing for 12½ per cent of the production reserved to her may be stated as follows:

(1) Lease dated August 11, 1941, for 20 years to Cal-Bay Corporation, lessee, in Parcel 57 comprising 4.96 acres of land. The Government took all of said 4.96 acres in these proceedings. Mae E. Dutra Roche claims damages for loss or fair market value of royalties on said gas and oil rights under said lease in the sum of \$3,500.

(Sec. 1248 C.C.P.; *City of Los Angeles v. Pomeroy*, 124 Cal. 597; *Spring Valley Water Co. v. Drinkhouse*, 92 Cal. 528.)

Given

Refused [106]

Defendants' Instruction No. 40

This action concerns the value of the gas and oil rights and the leases given for such development on the lands taken by the Government. Gas and oil leases are recognized by law as being property having a market value even if such leases are in undeveloped territory. Where gas and oil rights are concerned a reasonable probability of successful development is sufficient to make such leaseholds of great value. Where there is reasonable possibility of production in paying quantities gas and oil leases are common subject of barter and sale and, therefore, have a definite ascertainable market value.

There is a definite market value even where the prospects of successful development are too specu-

lative to be reasonably probable. If the uncertainties are such that the mineral interests in the condemned lands are bought and sold at arms-length transactions for valuable considerations, they have a market price translated into a fair market value for condemnation purposes.

(Eagle Lake Improvement Co. v. United States (5 C.C.A.), 141 Fed. (2d) 562 at 564.)

Given

Refused [107]

Defendants' Instruction No. 41

In this case defendants base their value of the gas and oil rights taken upon the fair market value determined by the opinion of certain witnesses who have information concerning said properties. The opinions of such witnesses as to market value of said gas and oil rights need not be based upon the sales of the same or similar rights. It is sufficient if after witness has testified that he knows the property and its market value he may be then called upon to state what his opinion is as to the fair market value.

(Montana Railway Company v. Warren, 137 U. S. 330, 34 L. Ed. 681.)

Given

Refused [108]

Defendants' Instruction No. 19

You are instructed that mineral rights are prop-

erty within the meaning of the Fifth Amendment of the Constitution, and that for the taking of mineral rights by the Government the owner thereof is entitled to just compensation.

(United States v. Shoshone Tribe, 304 U. S. 111, 58 S. Ct. 794, 82 L. Ed. 1213.)

Given ✓

Refused [109]

Defendants' Instruction No. 18

You are instructed that an oil and gas lease is property within the meaning of the Fifth Amendment of the Constitution, and that for the taking of such leasehold interest by the Government the owner thereof is entitled to just compensation.

(Certain Acres of Land v. United States, 5 Cir. 1945, 152 F. (2d) 566, 567, 568.)

Given ✓

Refused [110]

Defendants' Instruction No. 44

If you find and believe from the entire testimony that any of the witnesses as to value have magnified or exaggerated the value, or on the other hand have minimized or diminished the value on account of his or her interest in the action or in the property, or his or her prejudice, lack of candor or want of knowledge or lack of familiarity with the property or from lack of experience or lack of trust-

worthiness, or for any other reason, then it is your duty to reject the evidence of such witness or witnesses insofar as you believe the same to have been exaggerated or minimized. You must arrive at your verdict from what you find to be a preponderance of the credible evidence as to the amounts of money the defendants are entitled to receive as just compensation for the loss to him or her or it, occasioned by the taking of the property involved in this action on the dates specified.

Given

Refused [111]

Defendants' Instruction No. 43

The owner of mineral rights or oil and gas leases taken by the Government is entitled to just compensation therefor if they have a fair market value at the time of taking although they may be in undeveloped territory and there is only a reasonable possibility of successful development.

Given

Refused [112]

Defendants' Instruction No. 42

The owner of any mineral rights or oil and gas leases taken by the government and having a fair market value at the time of taking, is entitled to just compensation therefor.

Given

Refused [113]

Defendants' Instruction No. 45

A judge of this court, presiding in the trial of an action, is authorized, within proper bounds, to comment to the jury on the credibility of any witness and on any other phase of evidence.

I would caution you that it is your right and duty to exercise the same independence of judgment in weighing the judge's comment on the evidence as you are entitled to exercise in weighing the testimony of the witnesses and the arguments of counsel.

You will keep in mind that you are the exclusive judges of the credibility of the witnesses and of all questions of fact submitted to you. Such authority as the trial judge has to express his personal thought on any of these matters is confined to the sole purpose of aiding you in arriving at a verdict, and may not be used, and is not used in this case, to impose his will upon you or to compel a verdict.

(BAJI #6)

Given

Refused

[Endorsed]: Filed Feb. 10, 1947. [114]

In the District Court of the United States, in and
for the Northern District of California,
Southern Division

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 acres of land, more or less, situated in the
County of Contra Costa, State of California,
J. W. Von Heckeren, Cal-Bay Corporation,
Maria Faria, also known as Mary Faria,
Joseph Faria, Jr., Edward Faria and Mae E.
Roche, also known as Mae Dutra Roche, et al.

Defendants.

JUDGMENT AS TO OIL AND GAS RIGHTS
in PARCELS 3A, 57, 58, 59 AND 64.

The above entitled action came on for trial
before the above entitled Court, the Honorable
Louis E. Goodman presiding, as to Parcels 3A,
57, 58, 59 and 64 on the 21st day of January, 1947,
plaintiff being represented by its Attorney, M.
Mitchell Bourquin; and defendants Maria Faria,
also known as Mary Faria, Edward Faria, Joseph
Faria, Jr., Mae E. Roche, also known as Mae
Dutra Roche, and Cal-Bay Corporation, being
represented by A. J. Scampini, Walter Hettman
and Herbert Chamberlin, their Attorneys; and a
Jury having been regularly impanelled and sworn

for the sole purpose of determining the fair market value of the oil and gas rights in the property taken by this action and subject of this trial, and any damages resulting therefrom, and evidence, both oral and documentary, having been introduced at the trial, and the Jury having been fully instructed, [115] returned its verdict on the 7th day of February, 1947, finding the fair market value of Cal-Bay Corporation's interest in Parcel 59, on January 15, 1945, to be eight hundred thirty-six and no/100 dollars (\$836.00); finding the fair market value of Cal-Bay Corporation's interest in Parcel 58, on January 15, 1945, to be thirty and no/100 dollars (\$30.00); finding the fair market value of Cal-Bay Corporation's interest in Parcel 57, on July 24, 1944, to be sixty and no/100 dollars (\$60.00); finding that no severance damages occurred by reason of the taking of Cal-Bay Corporation's interest in Parcels 57, 58 and 59; finding the fair market value of Joseph Faria, Jr.'s interest in Parcel 59, on July 24, 1944, to be five hundred twelve and no/100 dollars (\$512.00); finding the fair market value of Joseph Faria, Jr.'s interest in Parcel 64, on July 24, 1944, to be five and no/100 dollars (\$5.00); finding that no severance damage occurred to other property under lease to Joseph Faria, Jr. by reason of taking of Joseph Faria, Jr.'s interest in Parcels 59 and 64; finding the fair market value of Maria Faria's interest in Parcel 59, on July 24, 1944, to be two thousand three hundred twelve and no/100 dollars (\$2,312.00); finding no severance damage occurred to other

property owned by said Maria Faria by reason of the taking of Maria Faria's interest in Parcel 59; finding the fair market value of Edward Faria's interest in Parcel 58, on July 24, 1944, to be fifty and no/100 dollars (\$50.00); and finding the fair market value of Mae E. Roche's interest in Parcel 59, on July 24, 1944, to be sixty and no/100 dollars (\$60.00), and the Court, being fully informed, finds:

I.

That the Complaint in this action was filed on July 22, 1944, that the plaintiff, through the United States Navy, did on the 24th day of July, 1944, enter into the exclusive possession of Parcels 57 and 64 and thereafter on January 15, 1945, did enter into the exclusive possession of Parcels 58 and 59, and ever since has been, and now is, in the exclusive possession and control of said parcels; that plaintiff and defendant Mae E. Roche, also known as Mae Dutra Roche, did heretofore enter into a Stipulation filed herein on March 12, 1945, pursuant to which said defendant Mae E. Roche, also known as Mae Dutra Roche, was paid the sum of fifteen thousand and no/100 dollars (\$15,000.00), as full, [116] adequate and just compensation for the taking of said Parcel 57, except her mineral rights subject of this Judgment: that plaintiff and defendant Edward Faria did heretofore enter into a Stipulation filed herein on March 8, 1945, pursuant to which said defendant Edward Faria was paid the sum of four hun-

dred and no/100 dollars (\$400.00), as full, adequate and just compensation for the taking of said Parcel 58, except his mineral rights subject of this Judgment; that plaintiff and defendant Maria Faria, also known as Mary Faria, did heretofore enter into a Stipulation filed herein on March 12, 1945, pursuant to which said defendant Maria Faria, also known as Mary Faria, was paid the sum of twenty-six thousand nine hundred fifty and no/100 (\$26,950.00), as full, adequate and just compensation for the taking of said Parcel 59, except her mineral rights subject of this Judgment, and, except as noted, no sums have been paid to said defendants by the plaintiff for the taking of the property as aforesaid.

II.

That the use for which the hereinafter described property is taken and condemned by the plaintiff is one authorized by law, and the said property and the taking thereof is necessary and suited to said use.

III.

That all parties interested directly or indirectly in the above mentioned parcels have been personally served with process or have appeared in said action; that said parcels, together with all claimants and parties interested therein, are within the jurisdiction of this Court, which has power and authority to enter this Final Judgment.

IV.

That the estate and interest taken, and subject of this Judgment, in Parcel 57 are those certain mineral rights provided by certain instruments more particularly described in Paragraph II of the Stipulation heretofore entered into with Mae E. Roche, also known as Mae Dutra Roche, and plaintiff as to Parcel 57 and filed herein on March 12, 1945; that the estate and interest taken, and subject of this Judgment, in Parcel 58 are those certain mineral rights provided by certain instruments more particularly described in Paragraph II of the Stipulation heretofore entered into with Edward Faria and plaintiff as to Parcel 58 [117] and filed herein on March 8, 1945; that the estate and interest taken, and subject of this Judgment, in Parcel 59 are those certain mineral rights provided by certain instruments more particularly described in Paragraph II of the Stipulation heretofore entered into with Maria Faria, also known as Mary Faria, and plaintiff as to Parcel 59 and filed herein on March 12, 1945; and that the estate and interest taken, and subject of this Judgment, in Parcel 64 are those certain mineral rights provided by certain instruments more particularly described under Paragraph (c) of Paragraph II, at page 5 of the Answer of defendant Joseph Faria, Jr. filed on or about January 16, 1946.

V.

That the fair market value on July 24, 1944 of the estate and interest taken in Parcel 57, and sub-

ject of this Judgment, was the sum of one hundred twenty and no/100 dollars (\$120.00), of which sum the fair market value on said date of the interest of Cal-Bay Corporation therein was sixty and no/100 dollars (\$60.00), and of the interest of Mae E. Roche, also known as Mae Dutra Roche, therein was sixty and no/100 dollars (\$60.00); that the fair market value on July 24, 1944, and on January 15, 1945, of the estate and interest taken in Parcel 58, and subject of this Judgment, was the sum of eighty and no/100 dollars (\$80.00), of which sum the fair market value on said dates of the interest of Cal-Bay Corporation therein was thirty and no/100 dollars (\$30.00), and of the interest of Edward Faria therein was fifty and no/100 dollars (\$50.00); that the fair market value on July 24, 1944, and on January 15, 1945, of the estate and interest taken in Parcel 59, and subject of this Judgment, was the sum of three thousand six hundred sixty and no/100 dollars (\$3,660.00), of which sum the fair market value on said dates of the interest of Cal-Bay Corporation was eight hundred thirty-six and no/100 dollars (\$836.00), the interest of Joseph Faria, Jr. therein was five hundred twelve and no/100 dollars (\$512.00), and the interest of Maria Faria, also known as Mary Faria, therein was two thousand three hundred **twelve and** no/100 dollars (\$2,312.00); that the fair market value on July 24, 1944, of the interest of Joseph Faria, Jr. in and to the estate and interest taken in Parcel 64, and subject of this Judgment, was the sum of five and no/100 dollars (\$5.00). [118]

VI.

That at the time of and immediately prior to the filing of the Complaint and the entry into possession by plaintiff, the defendant Joseph Faria, Jr. was not the owner of any interest in Parcel 3A, as described in the Complaint and Order for Immediate Possession, and said defendant Joseph Faria, Jr. was not the owner of any interest in the property described in the Answer of defendant Joseph Faria, Jr. under Paragraph (a) of Paragraph II thereof on pages 2, 3, and 4, filed herein on or about January 16, 1946; that at the time of and immediately prior to the date of entry into possession by plaintiff, the defendant Mae E. Roche, also known as Mae Dutra Roche, was the owner of a certain interest and the Cal-Bay Corporation was the owner of a certain interest in the mineral rights of Parcel 57, referred to in Paragraph IV hereof; that at the time of and immediately prior to the date of entry into possession by plaintiff, the defendant Edward Faria was the owner of a certain interest and the Cal-Bay Corporation was the owner of a certain interest in the mineral rights of Parcel 58, referred to in Paragraph IV hereof; that at the time of and immediately prior to the date of entry into possession by plaintiff, the defendant Maria Faria, also known as Mary Faria, was the owner of a certain interest as to all of

Parcel 59, the Cal-Bay Corporation was the owner of a certain interest as to a portion of Parcel 59, and Joseph Faria, Jr. was the owner of a certain interest as to a portion of Parcel 59, in the mineral rights referred to in Paragraph IV hereof; that at the time of and immediately prior to the date of entry into possession by plaintiff, the defendant Joseph Faria, Jr. was the owner of a certain interest as to Parcel 64 in the mineral rights referred to in Paragraph IV hereof; that the defendant Cal-Bay Corporation was at all times mentioned herein the owner of a certain interest in and to certain lands contiguous to but not taken by this proceeding, which interest and lands are more particularly described in Paragraphs 1 and 2 of the Amended Answer of defendant Cal-Bay Corporation, filed herein on or about January 6, 1947, excepting therefrom the land described as Parcels 57, 58 and 59 in Paragraph VII hereof; that the defendant Joseph Faria, Jr. was at all times mentioned herein the owner of a certain interest in and to certain lands contiguous to but not taken by this proceeding, which interest and lands are more particularly described [119] in Paragraph I and Sub-paragraphs (b) and (c) of Paragraph 2 of the Answer of defendant Joseph Faria, Jr., filed herein on or about January 16, 1946, excepting therefrom the land described as Parcels 59 and 64 in Paragraph VII hereof; that the defendant Maria Faria, also known as Mary Faria, was at all times mentioned herein the owner of a certain interest in and to certain lands contiguous but not

taken by this proceeding, which interest and lands are more particularly described in Paragraphs 1 and 3 of the Amended Answer of defendant Maria Faria, also known as Mary Faria, filed herein on or about January 6, 1947, excepting therefrom the land described as Parcel 59 in Paragraph VII hereof, and that no other person, firm or corporation had any interest in the mineral rights subject of this Judgment.

VII.

The parcels of land subject of this Judgment are each of them situate in the County of Contra Costa, State of California, and more particularly described as follows:

PARCEL 3A

Tract One

That parcel of land firstly described in the Decree of Distribution entered September 25, 1922 in the Superior Court of the State of California, in and for the County of Contra Costa, in the matter of the estate of Henry G. Bollman, deceased, (Case No. 5140), a certified copy of which was recorded September 25, 1922 in Volume 428 of Deeds, at page 37, as follows:

“Being a portion of the 600 acre tract sold by S. Pacheco to George Mascarich, March 30th, 1863, and bounded Northwest by lands of Dorr Sharp, Northeast of lands of Andrew Gehringer, Southwest by lands of John Denkinger and Southeast by Ayres lands, and containing 185

acres of land, and known as the Mette place, and also known as the Daniel Matheson, in the Rancho del Diablo; and being the same land conveyed to Daniel Matheson by George Mascarich and wife, by deed dated Oct. 30th, 1883, and recorded Nov. 3, 1883, in Vol. 44 of Deeds at page 136, records of Contra Costa County, California."

For exceptions to Tract One of this description see exceptions following Tract Three herein.

Tract Two

That parcel of land secondly described in the Decree of Distribution entered September 25, 1922 in the Superior Court of the State of California, in and for the County of Contra Costa, [120] in the matter of the estate of Henry G. Bollman, deceased (Case No. 5140, a certified copy of which was recorded September 25, 1922 in Volume 428 of Deeds, at page 37, as follows:

"Commencing at a stake in a mound on the Eastern side of the Monte Del Diablo Rancho, this stake being the southeast corner of tract of land sold by George Mascarich to Andrew Gehringer; thence s. $43\frac{1}{2}$ Deg. W. 75 chains to stake corner; thence at right angles S. $46\frac{1}{2}$ Deg. E. $15.33\frac{1}{3}$ chains to a stake corner; thence at right angles N. $43\frac{1}{3}$ Deg. East 75 chains to a stake corner; thence at right angles North $46\frac{1}{2}$ Deg. West $15.33\frac{1}{3}$ chains to point of beginning. Containing 115 acres of land, ac-

ording to the survey made by James B. Abbott Feb. 23, 1863, being the same property deeded by H. Robinson to Dorr Sharp, by deed executed Oct. 4, 1877, recorded Oct. 11, 1877, in Vol. 34, of deeds at page 281, Records of Contra Costa County, and is the same property conveyed by Dorr Sharp to Andrew Gehringer by deed dated Nov. 5, 1885, and recorded Nov. 5th, 1885, in Vol. 47 of deeds at page 266."

For exceptions to Tract Two of this description see exceptions following Tract Three herein.

Tract Three

Those parcels of land thirdly described in the Decree of Distribution entered September 25, 1922 in the Superior Court of the State of California, in and for the County of Contra Costa, in the matter of the estate of Henry G. Bollman, deceased, (Case No. 5140), a certified copy of which was recorded September 25, 1922 in Volume 428 of Deeds, at page 37, as follows:

"Beginning at the S. E. Corner of that certain tract of land conveyed by George Mascarich to Andrew Gehringer, March 31st, 1863, thence N. 43-1/4 deg. East running along the East boundary of lands of Gehringer estate 37.61 chains to station, being the corner to divisions 'A' and 'C' of the Gehringer Estate Partition, thence N. 52 Deg. 53' W. 11.695 chains to station at the N. E. boundary of private road; thence S. 43 Deg. W. 36.43 chains

to station in South line of lands of Gehringer estate at the corner of Division 'A' and 'B'; thence S. 47 Deg. 5' E. 11.595 chains into place of beginning. Containing an area of 43.00 acres of land."

Also Part 2 Division 'B' of said Gehringer Estate, being portions of Rancho Monte Del Diablo and portion of Section 27, T. 2 N., R. 1 W., M. D. M., described as follows:

Beginning at the Northwest corner of a tract of land conveyed by Andrew Gehringer to H. G. Bollman by deed dated February 24th, 1886, thence S. 46 Deg. 50' E., (following fence line and along North Boundary of Bollman's land), 40.18 chains to station corner to lands of Matherson (Matheson) and Bollman; thence N. 43 Deg. E. 25.78 chains to station in North boundary of Rancho Monte Del Diablo; thence S. 47½ Deg. E. running along said boundary line 10.00 chains to station to the point of intersection of the center line of Section 27, T. 2 N., R. 1 W. with the same ranch boundary; thence N. ½ Deg. W., running along the center line of Sec. 27, 64.00 chains to [121] quarter section corner between Sections 22 and 27, T. 2 N., R. 1 W.; thence S. 89-1/4 Deg. W. running along and between Sections 22 and 27, 37.22 chains to station; thence S. 21 3/4 Deg. E. 6.50 chains to station in fence; thence S. 8 Deg. E. 5.84 chains (following fence) to station; thence S. 34 Deg. E., following fence 10.78 chains to

station; thence S. $43\frac{1}{4}$ Deg. W. 37.67 chains into place of beginning. Containing an area of 263.41 acres of land.

Also one third ($\frac{1}{3}$) undivided interest in a private road 40 feet wide described as follows:

Beginning at gate post where the South line of the private road intersects west line of lands of Gehringer Estate; thence S. $48\frac{3}{4}$ Deg. E., running along the North line of Division 'A' of Gehringer Estate Partition 20.16 chains to station; thence S. 52 Deg. 53' E. 8.575 chains to station; thence N. 43 Deg. E. 40 feet; thence N. 52 Deg. 53' W. 8.575 chains to station; thence N. $48\frac{3}{4}$ Deg. W. 20.16 chains to West line of lands of Gehringer Estate; thence S. 43 Deg. W. 40 feet into place of beginning. Containing 1.75 acres.

Also one-third undivided interest in a certain strip of land used as a private road, conveyed by Salvio Pacheco to Andrew Gehringer, by deed dated Mar. 12th, 1866, recorded in Vol. 13 of Deeds, page 405, records of Contra Costa County, and described as follows, to wit:

Beginning at fence post situated in a gate way in west line of lands of Gehringer Estate, thence N. $59\frac{1}{2}$ Deg. W., along North Boundary of road crossing Diablo Creek, 24.45 chains to station; thence N. $65\frac{3}{4}$ Deg. W., 14.06 chains to station; thence N. $73\frac{3}{4}$ Deg. W. 6.51 chains to station; thence S. 80 Deg. W., 17.59 chains to

station; thence N. 73 3/4 Deg. W. 9.39 chains to station; thence N. 71 1/2 Deg. W. 11.68 chains to station in east boundary of Willow Pass Road; thence Southerly along east boundary of said road 33 feet to station; thence running Easterly parallel with Northern boundary of private road to station in West line of lands of Gehringer Estate, at N. W. corner of Division 'A'; thence Northerly running along westerly line of lands of Gehringer Estate, 33 feet into place of beginning. Containing an area of 4.18 acres of land."

Excepting From Said Tracts One, Two and
Three Above:

1—As to Tracts One and Two: The parcel of land conveyed by deed from H. G. Bollman, et ux., to Bay Point and Clayton Railroad Company, dated November 28, 1906 and recorded December 12, 1906 in Volume 122 of Deeds, at page 216, described as follows:

"A strip or tract of land seventy (70) feet wide across the lands of the parties of the first part hereinafter mentioned, being the strip or tract of land included between two parallel lines extending across said lands of the parties of the first part and drawn one on each side of the located center line of the railroad of the party of the second part and thirty-five (35) feet distant therefrom, said center line being particularly described as follows, to wit: [122]

“Beginning at the Northwest boundary line of the One hundred and fifteen acre tract hereinafter mentioned at a point distant along said Northwestern boundary line Ten Hundred and Twenty-four (1024) feet Southwesterly from the Northerly corner of said One hundred and fifteen acre tract, and from said point of beginning running South Fifty-seven degrees (57°) Fifty-eight and one-half minutes ($58^{\circ} \frac{1}{2}'$) East a distance of Six hundred and Ninety-four and three-tenths (694.3) feet; thence on a four degree curve to the right tangent to said last mentioned course, a distance of Eighteen Hundred and Forty-eight and eight-tenths (1848.8) feet more or less; thence tangent to said curve and bearing South Six degrees (6°) Thirteen Minutes ($13'$) West a distance of Six hundred and thirty-one and two-tenths (631.2) feet to a point in the Southeasterly boundary line of the One Hundred and Eighty-five (185) acre tract hereinafter mentioned, which last mentioned point is distant Nine Hundred and Five (905) feet Northeasterly along said boundary line from the Northwesterly corner of the One Hundred Acre tract now or formerly belonging to F. H. Ransome, containing five (5) acres more or less. Said lands of the parties of the first part across which said strip hereby conveyed extends being those two certain tracts of land of One Hundred and Fifteen (115) acres and One Hundred and Eighty-five (185) acres respectively, belonging to the parties of the first

part and adjoining each other, and bounded on the Northwest by the lands now or formerly belonging to one Mrs. L. McKean and on the Southeast by the lands now or formerly belonging to one F. H. Ransome, and being a part of the Rancho Monte Del Diablo.’’

2—As to Tracts One and Two: Those parcels of land conveyed by deed from Ralph D. Bollman, et al., to the United States of America, dated January 26, 1942 and recorded April 23, 1942 in Volume 702 of Official Records, at page 24, described as follows:

“Two parcels of land in the Rancho Monte Del Diablo, having a combined area of 8.67 acres, more or less, lying within the boundaries of that certain tract of land containing an area of 115 acres, more or less, described as Parcel No. Two and that certain tract of land containing an area of 185 acres, more or less, described as Parcel One, in that certain mortgage from Ralph D. Bollman to Marian Bollman Smith, dated March 25, 1938 and recorded on March 25, 1938 in Volume 447 of Official Records at page 150, Records of Contra Costa County; said two parcels of land having a combined area of 8.67 acres, more or less, are separately described as follows:

Parcel No. One: Beginning at point in the Northwesterly boundary of said 115 acre mortgage Parcel No. Two, distant along said northwesterly boundary North 43° 27' East

158.5 feet from the point where said boundary intersects the center line of that certain strip of land 70 feet in width, conveyed by H. G. Bollman and Mattie Smith Bollman to the Bay Point and Clayton Railroad Company by deed dated November 28, 1906 and recorded on December 12, 1906 in Volume 122 of Deeds at page 216, Records of Contra Costa County, and also distant along said northwesterly boundary North $43^{\circ} 27'$ East 1619.8 feet from the most easterly corner of that certain tract of land containing an area of 43 acres, more or less, described firstly in Parcel No. Three in aforesaid mortgage from Ralph D. Bollman to Marian Bollman Smith, said most easterly corner being also [123] the most southerly corner of that certain tract of land described as Parcel One in that certain deed of trust from Lena McKean to Willard D. Ellis, et al., trustees for the Federal Land Bank of Berkeley, dated September 1, 1933 and recorded on February 1, 1934 in Volume 353 of Official Records at page 376, Records of Contra Costa County, and running thence along said northwesterly boundary North $43^{\circ} 27'$ East 20.1 feet; thence leaving said boundary and running South $51^{\circ} 38'$ East 932.1 feet; thence South $31^{\circ} 44'$ West 48.3 feet to a point in the northeasterly boundary of aforesaid strip of land having a width of 70 feet conveyed to the Bay Point and Clayton Railroad Company; thence along the northeasterly boundary of said 70

foot strip conveyed to the Bay Point and Clayton Railroad Company; thence along the northeasterly boundary of said 70 foot strip conveyed to the Bay Point and Clayton Railroad Company, as follows: From a tangent bearing North $51^{\circ} 35'$ West, northwesterly on a curve to the left with a radius of 1467.47 feet for a distance of 25.16 feet to a point which bears South $59^{\circ} 35'$ East 937.4 feet from the point where the center line of said 70 foot strip intersects the northwesterly boundary of aforesaid 115 acre mortgage Parcel No. Two, said point of intersection being described as the point of beginning in said deed to the Bay Point and Clayton Railroad Company; thence continuing northwesterly on said curve to the left with a radius of 1467.47 feet for a distance of 30.38 feet; thence from a tangent bearing North $53^{\circ} 45'$ West, northwesterly on a curve to the left with a radius of 1672.09 feet for a distance of 30.64 feet; thence from a tangent bearing North $54^{\circ} 48'$ West, northwesterly on a curve to the left with a radius of 1944.91 feet for a distance of 30.55 feet; thence from a tangent bearing North $55^{\circ} 42'$ West, northwesterly on a curve to the left with a radius of 23.26.88 feet for a distance of 30.46 feet; thence from a tangent bearing North $56^{\circ} 27'$ West, northwesterly on a curve to the left with a radius of 2899.84 feet for a distance of 30.37 feet; thence from a tangent bearing North $57^{\circ} 03'$ West, northwesterly on a curve to the left with a radius of 3854.74

feet for a distance of 30.28 feet; thence from a tangent bearing North $57^{\circ} 30'$ West, northwesterly on a curve to the left with a radius of 5764.61 feet for a distance of 30.18 feet; thence from a tangent bearing North $57^{\circ} 48'$ West, northwesterly on a curve to the left with a radius of 11,494.17 feet for a distance of 30.09 feet; thence North $57^{\circ} 57'$ West 687.2 feet to a point in the northwesterly boundary of aforesaid 115 acre mortgage Parcel No. Two; thence leaving the northeasterly boundary of said 70 foot strip and running along the northwesterly boundary of said 115 acre mortgage Parcel No. Two North $43^{\circ} 27'$ East 122.8 feet to a point of beginning and containing an area of 1.96 acres, more or less.

Parcel No. Two: Beginning at a point in the Southwesterly boundary of aforesaid strip of land 70 feet in width conveyed to the Bay Point and Clayton Railroad Company distant South $55^{\circ} 23'$ East 903.3 feet from the point where the center line of said 70 foot strip intersects the northwesterly boundary of the 115 acre tract of land hereinbefore described as Mortgage Parcel No. Two and also distant South $74^{\circ} 45'$ West 87.9 feet from the most southerly corner of the 1.96 acre parcel hereinbefore described as Parcel No. One; thence from a tangent bearing South $53^{\circ} 43'$ East, southeasterly along the southwesterly boundary of said 70 foot strip conveyed to the Bay Point

and Clayton Railroad Company, on a curve to the right with a radius of 1397.47 feet for a distance of 35.16 feet; thence continuing along said boundary southeasterly on said curve to the right with a radius of [124] 1397.47 feet for a distance of 25.17 feet; thence leaving said boundary and running South 17° 30' East 66.0 feet; thence South 22° 52' East 556.4 feet; thence along the arc of a curve to the right (tangent to the preceding course) with a radius of 125 feet, a distance of 125.2 feet; thence South 34° 32' West 274.7 feet; thence along the arc of a curve to the right, (tangent to the preceding course) with a radius of 225 feet, a distance of 35.0 feet; thence South 43° 26' West 390.3 feet; thence along the arc of a curve to the left, (tangent to the preceding course) with a radius of 475 feet, a distance of 33.2 feet; thence South 39° 26' West 170.6 feet; thence along the arc of a curve to the right, (tangent to the preceding course) with a radius of 125 feet, a distance of 46.9 feet; thence South 60° 56' West 1150.0 feet; thence along the arc of a curve to the left, (tangent to the preceding course) with a radius of 75 feet, a distance of 23.1 feet; thence South 43° 19' West 1555.3 feet; thence South 51° 19' West 124.4 feet to a point in the boundary between aforesaid 185 acre tract of land described as Parcel No. One in said mortgage to Marian Bollman Smith and the R. M. Burgess Company's Map No. 1, Gehringer Subdivision, a Portion of Rancho Monte

Del Diablo, Contra Costa County, Calif." filed on May 28, 1918 in Map Book 16 at page 353, in the office of the County Recorder of Contra Costa County, distant along said boundary South $46^{\circ} 41' 30''$ East 181.8 feet from the most northerly corner of Lot 26 of said Gehringer Subdivision as shown on said map; thence along said boundary North $46^{\circ} 41' 30''$ West 25.0 feet; thence continuing along said boundary North $46^{\circ} 41' 30''$ West 156.8 feet to the most northerly corner of said Lot 26, said most northerly corner being distant along said boundary South $46^{\circ} 41' 30''$ East 83.5 feet from the most southerly corner of that certain 115 acre tract described as Parcel No. Two in said mortgage to Marian Bollman Smith; thence continuing along said boundary North $46^{\circ} 41' 30''$ West 10.4 feet to a point in the easterly boundary of a County Road; thence leaving the boundary between said 185 acre tract and said Gehringer Subdivision and running along the easterly boundary of said County Road North $22^{\circ} 53'$ East 25.95 feet; thence from a tangent bearing North $22^{\circ} 53'$ East, continuing northerly along the easterly boundary of said County Road on a curve to the right with a radius of 380 feet for a distance of 27.0 feet; thence leaving said easterly boundary and running South $46^{\circ} 42'$ East 148.0 feet; thence North $56^{\circ} 40'$ East 82.4 feet; thence North $43^{\circ} 19'$ East 1548.3 feet; thence along the arc of a curve to the right (tangent to the preceding course) with a radius

of 135 feet, a distance of 41.5 feet; thence North $60^{\circ} 56'$ East 1150.0 feet; thence along the arc of a curve to the left (tangent to the preceding course) with a radius of 65 feet, a distance of 24.4 feet; thence North $39^{\circ} 26'$ East 170.6 feet; thence along the arc of a curve to the right (tangent to the preceding course), with a radius of 535 feet, a distance of 37.4 feet; thence North $43^{\circ} 26'$ East 390.3 feet; thence along the arc of a curve to the left, (tangent to the preceding course) with a radius of 165 feet, a distance of 25.6 feet; thence North $34^{\circ} 32'$ East 121.2 feet; thence North $55^{\circ} 28'$ West 40.0 feet; thence North $34^{\circ} 32'$ East 214.8 feet; thence North $22^{\circ} 52'$ West 481.5 feet; thence North $43^{\circ} 00'$ West 131.2 feet; thence North $31^{\circ} 44'$ East 100.00 feet, more or less, to the point of beginning, and containing an area of 6.71 acres, more or less."

3—That parcel of land and right of way conveyed by deed from Ralph D. Bollman, et ux., to R. D. Russell, dated December 10, 1943 and recorded March 14, 1944 in Volume 751 of Official Records, at page 339, described as follows: [125]

"Parcel One: Portion of the Rancho Monte Del Diablo containing 25 acres, more or less, described as follows:

Beginning at the most westerly corner of the

43 acre parcel of land thirdly described in the Decree of Distribution entered September 25, 1922 in the Superior Court of the State of California, in and for the County of Contra Costa, in the matter of the estate of Henry G. Bollman, deceased, (Case No. 5140) a certified copy of which was recorded September 25, 1922 in Volume 428 of Deeds, at page 37, thence from said point of beginning North $43^{\circ} 30'$ East along the northwest line of said 43 acre parcel of land 610.08 feet; thence South $46^{\circ} 30'$ East 1799.95 feet to the center line of a 40 foot in width road; thence along said center line as follows: South $43^{\circ} 30'$ West 452.27 feet, southwesterly along the arc of a curve to the left with a radius of 400 feet, tangent to the last mentioned course 142.83 feet and South $23^{\circ} 02' 30''$ West tangent to said curve 10.85 feet to the southwest line of the 185 acre parcel of land firstly described in said decree of distribution (428 D 37); thence north $46^{\circ} 30'$ West along said southwest line and along the southwest line of the 115 acre parcel of land secondly described in said decree of distribution (428 D 37) 1085.02 feet; thence North $47^{\circ} 05'$ West along the southwest line of the above mentioned 43 acre parcel of land 764 feet to the point of beginning."

"Parcel Two: A right of way (not to be exclusive) as an appurtenance to the tract of land described as Parcel One above, for use as a roadway, for vehicles of all kinds, pedestrians

and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or conduits to carry said lines over a strip of land 20 feet in width, the southeast line of which is 20 feet southeasterly measured at right angles or radially from the northwest line thereof and which northwest line is the southeast line of said Parcel One above.”

4—As to Tract Three: That Portion of the Northwest quarter of Section 27, Township 2 North, Range 1 West, Mount Diablo Base and Meridian described as follows:

Beginning at the Northeast corner of the Northwest quarter of said Section 27; running thence South $89^{\circ} 15'$ West along the North line of said Section 27, a distance of 37.22 chains, more or less, to an angle point in the Northeasterly boundary line of that certain 4961.16 acre parcel of land described in the amended complaint in the proceeding, entitled United States of America vs. 5430 acres of land, et al., Case No. 23529-G, on file herein; thence South $53^{\circ} 13' 31''$ East along said Northeasterly boundary line 3080 feet, more or less, to the East line of the Northwest quarter of said Section 27; thence North along said East line 1870 feet, more or less, to the point of beginning, containing, after said exceptions, a net area of 512.22 acres, more or less. [126]

PARCEL 57

Portion of Lot 1, Section 21, and portion of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, containing 4.96 acres, more or less, described as follows:

Beginning as a point on the North line of the Rancho Monte Del Diablo where said line is intersected by the West line of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian; thence from said point of beginning, along the West line of said Section 21, North 689.97 feet; thence leaving the West line of said Section 21, South $74^{\circ} 53'$ East 333.40 feet; thence South $0^{\circ} 47\frac{1}{2}'$ East 351.38 feet; thence South $72^{\circ} 31'$ East 29.97 feet; thence South $28^{\circ} 35'$ West 430.40 feet to the fence line and the North line of the Rancho Monte Del Diablo; thence along said fence and Rancho line, North $47^{\circ} 49'$ West 201.53 feet to the point of beginning.

PARCEL 58

Portion of the southwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, containing 5 acres, more or less, described as follows:

Beginning at a point which bears north $2^{\circ} 33'$ west, 43.51 feet from a concrete monument

in the easterly line of the Rancho Monte Del Diablo, which monument is the most northerly corner of the parcel of land described in the deed of trust from Joseph Williams, Jr., et ux., to Willard D. Ellis, et al., trustees for the Federal Land Bank of Berkeley, dated January 1, 1934, and recorded January 23, 1934, in Volume 353 of Official Records at page 312; thence from said point of beginning north $30^{\circ} 10'$ east 570.68 feet; thence south $46^{\circ} 15'$ east 392.48 feet; thence south $30^{\circ} 10'$ west 570.68 feet; thence north $46^{\circ} 15'$ west 392.48 feet to the point of beginning.

PARCEL 59

Parcel One

Lots 1, 2 and 3; the north $\frac{1}{2}$ of the northwest $\frac{1}{4}$; the southeast $\frac{1}{4}$ of the northwest $\frac{1}{4}$; the south $\frac{1}{2}$ of the northeast $\frac{1}{4}$; the north $\frac{1}{2}$ of the southeast $\frac{1}{4}$; and the southeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian.

EXCEPTING FROM PARCEL ONE:

1—That parcel of land described in the deed from Antone Faria, to Joseph S. Williams, Jr., dated April 21, 1911 and recorded April 21, 1911 in Volume 162 of Deeds, at page 562, as follows:

“Beginning at a station post in the division

fence between the lands belonging to the party of the first part in the southwest Quarter of Section 21 T. 2 N. R. 1 W. M. D. M. and lands of J. S. Williams, Jr., known as the Fernandez Ranch [127] in the Rancho Monte Del Diablo; thence N. $65\frac{3}{4}^{\circ}$ E. 284.4 feet to station; thence S. $29\frac{1}{4}^{\circ}$ E. to and crossing a creek that runs from near Antone Faria's dwelling 122 feet to station; thence S. $54\frac{1}{2}^{\circ}$ W. 229.00 feet to station in aforesaid boundary between Antone Faria and J. S. Williams, Jr.; thence N. $47\frac{1}{2}^{\circ}$ W. along said boundary at 112.00 feet crossing said creek 173.00 feet to point of beginning, and containing .84 acres of land more or less."

2—That parcel of land described in the deed from Antone Faria, et ux., to Frank J. Dutra, dated December 3, 1927 and recorded December 5, 1927 in Volume 111 of Official Records, at page 183, as follows:

"Beginning at a point on the northerly boundary line of the Rancho Monte Del Diablo where said line is intersected by the westerly line of Section 21, Township 2 North, Range 1 West, M. D. B. & M.; thence running along the westerly boundary line of said Section 21, North a distance of 689.97 feet to a point; thence leaving the westerly boundary of said Section 21, S. $74^{\circ} 53'$ E., a distance of 333.40 feet to a point; thence S. $0^{\circ} 47\frac{1}{2}'$ E., a distance of 351.38 feet to a point; thence S. $72^{\circ} 31'$ E., a distance of 29.97 feet to a point; thence S. $28^{\circ} 35'$ W., a distance

of 430.40 feet to a point in the fence line and the northerly boundary line of the Rancho Monte Del Diablo; thence running along said fence and boundary line N. $47^{\circ} 49'$ W., a distance of 201.53 feet to the point of beginning. Containing an area of 4.96 acres of land and being a portion of the Northwest quarter of Section 21, Township 2 North, Range 1 West, M. D. B. & M."

3—That parcel of land described in the deed from Mary Faria to Edward Faria, dated August 11, 1941 and recorded August 14, 1941 in Volume 591 of Official Records, at page 466, as follows:

"Portion of the southwest $1/4$ of the northwest $1/4$ of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, containing 5 acres, more or less, described as follows:

Beginning at a point which bears north $2^{\circ} 33'$ west, 43.51 feet from a concrete monument in the easterly line of Rancho Monte Del Diablo, which monument is the most northerly corner of the parcel of land described in the deed of trust from Joseph Williams, Jr., et ux., to Willard D. Ellis, et al., trustees for The Federal Land Bank of Berkeley, dated January 1, 1934 and recorded January 23, 1934 in Volume 353 of Official Records, at page 312; thence from said point of beginning north $30^{\circ} 10'$ east

570.68 feet; thence south $46^{\circ} 15'$ east 392.48 feet; thence south $30^{\circ} 10'$ west 570.68 feet; thence north $46^{\circ} 15'$ west 392.48 feet to the point of beginning."

Parcel Two

That parcel of land described in the deed from Joseph Faria, et ux., to Antonio Faria, et ux., dated February 20, 1923 and recorded February 20, 1923 in Volume 432 of Deeds, at page 181, as follows:

Commencing at the center of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian; running thence east along the south line of the northeast quarter of said [128] Section 21, 80 rods, more or less, to the southeast corner of the northwest quarter of said Section 21, station fence post; thence northeasterly along fence to a point on the north line of the south half of the northwest quarter of section 22, 48 rods easterly from the northwest corner of the south half of the northwest quarter of Section 22; thence west along the north line of the south half of the northwest quarter of Section 22, and along the north line of the south half of the northeast quarter of Section 21, to the northwest corner of the south half of the northeast quarter of Section 21; thence south along the western boundary line of the northeast quarter of Section 21 to

the place of beginning, being all of the south half of the northeast quarter of Section 21, T. 2 N., R. 1 W., M. D. M., and all of that portion of the south half of the northwest quarter of Section 22, T. 2 N., R. 1 W., M. D. M., lying west of the fence which runs from the southwest corner of the south half of Section 22, northeasterly to the north line thereof; the whole of said premises hereby conveyed containing 92 acres, more or less.

Parcel Three

That parcel of land described in the deed from Joseph S. Williams, Jr., to Antone Faria, dated April 21, 1911 and recorded April 21, 1911 in Volume 162 of Deeds, at page 564, as follows:

Beginning at a fence post in the dividing line between lands of J. S. Williams, Jr., in the Rancho Monte Del Diablo formerly known as the Fernandez Ranch and the lands of Antone Faria in the southwest quarter of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian; thence meandering along a fence on the west side of the road leading to Antone Faria's dwelling house; South 10° West 1.00 chain to station; thence South 4° East 1.00 chain to station; thence South $18\frac{1}{2}^{\circ}$ East 1.00 chain to station; thence South $31\frac{1}{2}^{\circ}$ East 1.00 chain to station;

thence South 42° East 1.00 chain to station;
thence South $54^{\circ} 40'$ East 1.00 chain to station;
thence South $60 \frac{3}{4}^{\circ}$ East 1.00 chain to station;
thence South $66 \frac{1}{2}^{\circ}$ East 1.00 chain to station;
thence South $71 \frac{1}{2}^{\circ}$ East 1.00 chain to station;
thence South 85° East 1.00 chain to station;
thence South $83 \frac{1}{2}^{\circ}$ East .80 chains to station;
thence North $47 \frac{1}{4}^{\circ}$ West along the division
line between Antone Faria and J. S. Williams,
Jr., 9.61 chains to point of beginning, and con-
taining 1.20 acres of land, more or less.

Parcel Four

The right of way granted in the deed from Frederick W. Blume, et al., to Antone Faria, et al., dated February 16, 1916 and recorded March 7, 1916 in Volume 266 of Deeds, at page 60, as follows:

Beginning at station post J. G. on the northeasterly boundary line of the Rancho Monte Del Diablo in the survey made for John Garcia of the westerly portion of the tract of land formerly claimed by Bertolo Perez, the same being corner of lands now owned by Joseph Williams, Jr., and lands of the parties of the first part; thence south $30 \frac{1}{4}^{\circ}$ West along the dividing line between lands of Joseph Williams, Jr. and lands of the parties of the first part 50 chains more or less to the [129] northeasterly boundary line of a strip of land thirty feet wide owned and used by Joseph Williams, Jr. as a

private road, the said northeasterly boundary line thereof being thirty feet northeasterly from the northeasterly boundary of the Bay Point and Clayton Railroad right of way; thence northwesterly along the northeasterly boundary line of said Williams Road, twenty-five feet; thence northeasterly and parallel with the dividing line between lands of Williams and lands of the parties of the first part, fifty chains, more or less, to the dividing line between lands of the parties of the first part and lands of Manuel V. Braz and Frank Manuel; thence southeasterly along said dividing line twenty-five feet, more or less, to the place of beginning and being a strip of land twenty-five feet off the southeasterly side of the lands of parties of the first part, formerly known as the Garcia Ranch.

PARCEL 64

Parcel One

The southwest quarter of Section 22, in Township 2 North, Range 1 West, Mount Diablo Base and Meridian.

Containing an area of 160 acres, more or less.

Parcel Two

The south one-half of the northwest quarter of Section 22, Township 2 North, Range 1 West, Mount Diablo Base and Meridian.

Excepting therefrom the following:

(1) That certain parcel of land described in that certain deed dated September 3, 1904, executed by Joseph Faria to W. W. Wight and S. A. Sellers and recorded November 14, 1904 in Volume 109 of Deeds, page 198, described as follows:

A rectangular piece of land 14 rods wide, East and West, and 80 rods long north and south, off of the east end of the south one-half of the northwest quarter of Section 22, Township 2 North, Range 1 West, Mount Diablo Base and Meridian.

(2) That portion of that certain parcel of land included in the south half of the northwest quarter described in deed dated February 20, 1923 executed by Joseph Faria and Geraldine Faria, his wife, to Antonio Faria and Mary Faria, his wife, and recorded February 20, 1923 in Volume 432 of Deeds, page 181, described as follows:

Commencing at the center of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, running thence east, along the south line of the northeast quarter of said Section 21, 80 rods, more or less to the southeast corner of the northwest quarter of Section 21, Station fence post; thence northeasterly along fence to a point on the north line

of the south one-half of the northwest quarter of Section 22, 48 rods easterly from the northwest corner of the south one-half of the northwest quarter of Section 22, thence west along the north line of the south one-half of the northwest quarter of Section 22, and along the north line of the south one-half of the northeast quarter of Section 21 to the northwest corner of the south one-half of the northeast quarter of Section 21; thence south along the western boundary line of the northeast quarter of Section 21, to the place of beginning, being all of the south one-half of the northeast quarter of Section 21, Township 2 North, Range 1 West, Mount Diablo Base and Meridian and all of that portion of the south half of the northwest quarter of Section 22, Township 2 North, Range 1 West Mount Diablo Base and Meridian, lying west of fence which runs from the southwest corner of the south one-half of Section 22, northeasterly to the north line thereof; the whole of said premises hereby conveyed containing 92 acres more or less.

Said parcel two containing a net area of 61 acres of land, more or less. [130]

Now, therefore, by virtue of the Findings of Fact and the verdict of the Jury aforesaid, it is ordered, adjudged and decreed that the estate and interest hereinabove described in Paragraph IV shall vest in the United States of America forthwith upon payment into the Registry of this Court by plaintiff

of the sums hereinabove found to be full, adequate and just compensation for the taking of the estate and interest subject of this Judgment in and to the above described parcels of land and said estate and interest described is deemed to and is taken and condemned for public uses of the United States and is authorized by law, and said estate and interest shall vest in the United States of America free and discharged of all claims, liens and encumbrances of every kind whatsoever; and

It is further ordered, adjudged and decreed that as full, adequate and just compensation for the taking and condemning of the interest of Cal-Bay Corporation in Parcel 57 and any and all damages resulting therefrom, the sum of sixty and no/100 dollars (\$60.00), together with interest at the rate of six per cent (6%) per annum from July 24, 1944, until the date of payment thereof, and for the taking and condemning of the interest of Cal-Bay Corporation in the estate taken in Parcels 58 and 59, and any and all damages resulting therefrom, the sum of eight hundred ninety-six and no/100 dollars (\$896.00), together with interest at the rate of six per cent (6%) from July 15, 1945, until the date of payment thereof, are hereby awarded to the defendant Cal-Bay Corporation; and

It is further ordered, adjudged and decreed that as full, adequate and just compensation for taking and condemning of the interest of the defendant Joseph Faria, Jr. in Parcels 59 and 64, and any and all damages resulting therefrom, the sum of five

hundred seventeen and no/100 dollars (\$517.00), together with interest at the rate of six per cent (6%) per annum from July 24, 1944, to the date of payment thereof is awarded to the defendant Joseph Faria, Jr.; and

It is further ordered, adjudged and decreed that as full, adequate and just compensation for the taking and condemning of the interest of Maria Faria, also known as Mary Faria, in Parcel 59, and any and all damages resulting therefrom, the sum of two thousand three hundred twelve and no/100 dollars (\$2,312.00), together with interest at the rate of six per cent (6%) per annum from July 24, 1944 [131] to the date of payment thereof is awarded to the defendant Maria Faria, also known as Mary Faria; and

It is further ordered, adjudged and decreed that as full, adequate and just compensation for taking and condemning of the interest of Edward Faria in Parcel 58, and any and all damages resulting therefrom, the sum of fifty and no/100 dollars (\$50.00), together with interest at the rate of six per cent (6%) per annum from July 24, 1944, to the date of payment thereof is awarded to the defendant Edward Faria; and

It is further ordered, adjudged and decreed that as full, adequate and just compensation for the taking and condemning of the interest of Mae E. Roche, also known as Mae Dutra Roche, in Parcel 57, and any and all damages resulting therefrom,

the sum of sixty and no/100 dollars (\$60.00), together with interest at the rate of six per cent (6%) per annum from July 24, 1944, to the date of payment thereof is awarded to the defendant Mae E. Roche, also known as Mae Dutra Roche; and

It is further ordered, adjudged and decreed that defendant Joseph Faria, Jr. is entitled to no compensation for the taking of Parcel 3A, and any and all damages resulting therefrom, subject hereof.

Done in open Court this 28th day of February, 1947.

/s/ LOUIS E. GOODMAN,

Judge, United States District Court,
Northern District of California.

[Endorsed]: Filed and Entered Feb. 28, 1947.

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To M. Mitchell Bourquin, Esq.,
620 Market Street, San Francisco, Calif.,
A. J. Scampini, Esq.,
300 Montgomery Street, San Francisco, Calif.,
Walter E. Hettman, Esq.,
300 Montgomery Street, San Francisco, Calif.,
Herbert Chamberlin, Esq.,
Russ Building, San Francisco, Calif.

You Are Hereby Notified that on February 28, 1947, Judgment was entered of record in this office in the above entitled case.

C. W. CALBREATH, jes
Clerk, U. S. District Court.

San Francisco, California,

March 11, 1947. [133]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Defendants Cal-Bay Corporation, Mary Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, hereby move the above entitled court for an order setting aside the verdict or verdicts of the jury rendered in the above entitled action on February 7, 1947, vacating the judgment or judgments

entered on said verdict or verdicts, and granting said defendants and each of them a new trial for the following and each of the following causes, grounds, or reasons:

1. Irregularities in the proceedings of the court by which defendants were prevented from having a fair trial.
2. Inadequate damages appearing to have been given under the influence of passion or prejudice. [134]
3. Insufficiency of the evidence to justify the verdict or verdicts.
4. The verdict is against law as to each said defendant.
5. Error in law occurring at the trial and excepted to by said defendants.

Said Motion Is Made pursuant to the provisions of Section 657 of the Code of Civil Procedure of the State of California, pursuant to the provisions of Title 28, U.S.C.A., sec. 391, and pursuant to Rule 59 of the Federal Rules of Civil Procedure, in so far as said provisions and Rule are applicable to condemnation proceedings prosecuted within the State of California.

Said Motion is made upon the pleadings and proceedings in said action, upon the minutes of the

court, and upon the Reporter's Transcript of testimony and proceedings.

Dated, San Francisco, March 13th, 1947.

/s/ A. J. SCAMPINI,

/s/ WALTER E. HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for said

Defendants.

[Endorsed]: Filed March 14, 1947. [135]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 8th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

ORDER DENYING MOTION
FOR NEW TRIAL

The motion of defendants Cal-Bay Corp., Mary Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche for a new trial having been submitted to the Court for consideration and decision and due

consideration having been had thereon, it is Ordered that said motion be and it is hereby denied. [136]

[Title of District Court and Cause.]

NOTICE OF ORDER DENYING MOTION
FOR NEW TRIAL

To the Defendants Maria Faria, also known as Mary Faria, Edward Faria, Joseph Faria, Jr., Mae E. Roche, also known as Mae Dutra Roche, and Cal-Bay Corporation, and to A. J. Scampini, Walter Hettman and Herbert Chamberlin, their attorneys:

You and Each of You Will Please Take Notice that on the 8th day of April, 1947, the above entitled Court did enter its Order Denying the Motion of the above Defendants for a New Trial in this action as to Parcels 3A, 57, 58, 59 and 64.

Dated this 9th day of April, 1947.

UNITED STATES OF
AMERICA,

By /s/ M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General,
Attorney for Plaintiff.

[Endorsed]: Filed April 21, 1947. [137]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO
CIRCUIT COURT OF APPEALS

Notice Is Hereby Given that the above named defendants Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, hereby appeal, and each said defendant hereby appeals, to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on February 28, 1947. The said defendants, separately and collectively, appeal from each and every part of said judgment.

Dated, San Francisco, April 24, 1947.

/s/ A. J. SCAMPINI,

/s/ WALTER E. HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for said Appellants.

[Endorsed]: Filed April 26, 1947. [138]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

In accordance with Rule 75 of the Federal Rules of Civil Procedure, the defendants Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, hereby designate all of the following parts of the record, proceedings, and evidence in the case to be contained in the record

on their appeal from the judgment entered herein on February 28, 1947:

1. Original complaint filed July 22, 1944, omitting therefrom the names of all defendants except "5,430 Acres of Land, more or less, situate in the County of Contra Costa, State of California, Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche," and omitting from Paragraph IX thereof all Parcel Nos. and Names of Owners except as to Parcels 3, 57, 58, 59, and 64.

2. Order for immediate possession dated July 24, 1944.

3. Petition for order modifying order of immediate possession as to parcels 58 and 59 and order thereon dated September 28, 1944.

4. Notice of termination of right to possession of parcels 58 and 59, filed December 20, 1944.

5. Stipulation between plaintiff and defendant Edward Faria for final judgment on parcel 58, and order thereon, filed March 8, 1945.

6. Stipulation between plaintiff and defendant Maria Faria for final judgment on parcel 59, and order thereon, filed March 12, 1945.

7. Stipulation between plaintiff and defendant Mae E. Roche for final judgment on parcel 57, and order thereon, filed March 12, 1945.

8. Answer of defendant Joseph Faria, Jr.

9. Amendment to answer of defendant Joseph Faria, Jr.

10. Amended answer of defendant Edward Faria.

11. Amended answer of defendant Mae E. Roche.

12. Amended answer of defendant Maria Faria, verified December 31, 1946.

13. Amended answer of defendant Cal-Bay Corporation, verified December 31, 1946.

14. All jury verdicts.

15. Judgment as to oil and gas rights in parcels 3A, 57, 58, 59, and 64, entered February 28, 1947.

16. Notice of entry of judgment, dated March 11, 1947.

17. Motion for new trial, filed March 14, 1947.

18. Minute order of April 8, 1947, denying motion for new trial.

19. Notice of order denying motion for new trial, dated April 9, 1947.

20. Notice of appeal.

21. Defendants' instructions refused by the Court.

22. Reporter's transcript of proceedings, all of pages 1 to 1046, both inclusive, being volumes 1 to 12, inclusive, of the transcript.

23. Defendants' exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 27, 30, 31, 34, 35, and 36.

24. Plaintiff's exhibits N, Q, R, S, T, U, and V.

25. This designation.

26. Statement of the points on which defendants intend to rely on their appeal.

Defendants and appellants will apply to the District Court for an order to send to the Appellate Court Defendants' original exhibits Nos. 10, 11, 12, 13, 17, 25, 26, 28, 29, 32, 33, 37, and 38, and Plaintiff's original exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, O, P, W, X, Y, and Z.

Annexed hereto and served with this designation is a statement of the points on which the said defendants intend to rely on their appeal.

Dated, San Francisco, May 2, 1947.

/s/ A. J. SCAMPINI,

/s/ WALTER E. HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for said

Defendants and Appellants.

Copy received this 6th day of May, 1947.

M. MITCHELL BOURQUIN,

Attorney for Plaintiff

and Respondent.

[Endorsed]: Filed May 6, 1947. [141]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH DEFENDANTS INTEND TO RELY ON THEIR APPEAL

1. Irregularities in the proceedings of the court by which the defendants and appellants were prevented from having a fair trial.

2. Inadequate damages appearing to have been given under the influence of passion or prejudice.

3. Insufficiency of the evidence to justify the verdict or verdicts.

4. The verdict is against law as to each defendant and appellant.

5. Error in law occurring at the trial and excepted to by defendants and appellants. [142]

6. The district court erred in denying appellants' motion for a new trial.

Dated, San Francisco, May 2, 1947.

/s/ A. J. SCAMPINI,

/s/ WALTER E. HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for said

Defendants and Appellants.

Copy received this 6th day of May, 1947.

M. MITCHELL BOURQUIN,

Attorney for Plaintiff

and Respondent.

[Endorsed]: Filed May 6, 1947. [143]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellants herein may have to and including July 15, 1947, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated, June 3rd, 1947.

LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed June 3, 1947. [144]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellants herein may have to and including July 25, 1947, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated, July 15, 1947.

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed July 15, 1947. [145]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing 145 pages, numbered from 1 to 145, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of United States of America, Plaintiff, vs. 5,430 Acres of Land, etc., et al., Defendants, No. 23529-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$18.10 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 24th day of July, A. D. 1947.

[Seal]

C. W. CALBREATH,
Clerk.

/s/ M. E. VAN BUREN,
Deputy Clerk. [146]

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 23,529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Certain Land in Contra Costa County as to Parcels
57, 58, 59 and 3-A,

Defendants.

Before: Hon. Louis E. Goodman, Judge.

REPORTER'S TRANSCRIPT

Tuesday, January 21, 1947

Appearances:

For the United States:

M. Mitchell Bourquin, Esq.,

Thomas Martin, Esq.

For Defendants:

A. J. Scampini, Esq.,

Walter E. Hettman, Esq.,

Herbert Chamberlin, Esq.

(A jury was impaneled and sworn to try the above-entitled cause, after which an adjournment was taken until tomorrow, Wednesday, January 22, 1947, at 10:00 o'clock a.m.) [1*]

*Page numbering appearing at top of page of original Reporter's Transcript.

Wednesday, January 22, 1947, 10:00 o'clock a.m.

(A juror being ill when this cause came on for trial, the court excused him and set aside the swearing of the jury.)

Afternoon Session, January 22, 1947, 2:00 p.m.

(A jury was heretofore impaneled and sworn to try the cause.)

OPENING STATEMENT ON BEHALF OF DEFENDANTS

Mr. Scampini: May it please the Court and ladies and gentlemen of the jury, the case which we are about to begin and which you will be called upon to ultimately determine and resolve is not one of the usual run-of-the-trial cases involving business contracts, or the ordinary actions at law for damages for breach of a contract. The defendants are not here today because they want to be here. We are not here because we want to be. We are here because of the action of the United States in starting the present action in July, July 22, 1944, for the purpose of condemning certain property lying approximately southwest, I think, of Port Chicago, for the expansion of the Port Chicago Ammunition Depot. We are not here protesting the action of the Government. We are not protesting any part of the action of the Government. Far be it from us to protest the action of the United States condemning the property.

Mr. Bourquin: Your Honor, I don't like to in-

interrupt, but I don't think this statement of counsel has the function of an opening statement. I believe the counsel should present to the jury what he proposes to prove, and his view as to the actions [2] of the Government are not material.

The Court: Well, I think, technically, that is correct. I don't wish to preclude him. I believe he was working up to it.

Mr. Scampini: Preliminarily, ladies and gentlemen, I was merely going to say that we are here because, as his Honor has pointed out, under the Constitution, when the Government condemns our property for public use we are entitled to just compensation for the property.

In the presentation of the evidence to you, ladies and gentlemen, so as to enable you to pass upon the fair value of this property, we run into what we believe to be one of the complexities in this case. That is why I said at the outset that this case is not the usual run-of-the-trial cases. It involves oil and gas leases, and royalty interests, and we are here to have determined the reasonable value of these oil and gas leases and royalty interests involved in this case, which as the evidence will disclose, is inextricably wound up with a determination of the value of the properties which are the subject of this action: to determine whether or not we had achieved what we believed and contend that we had achieved, the reasonable commercial discovery of natural gas.

I desire at this point to emphasize that the preliminary object of our proof is not, and our contention is not that we have discovered commercial accumulation of petroleum. Our [3] contention is we have discovered a commercial accumulation of natural gas on the property which has been condemned by the Government, and that our well had just entered the formation and was just about to be completed at the instant the action took place.

It will be necessary, in the presentation of the evidence, and during the trial, to refer to maps, because most of the evidence will be submitted to you by geological and petroleum engineers and experts, and it will be in the nature of technical evidence. Preliminarily, let us refer to this map right over here. There is at the bottom of this blackboard a map which is predicated upon the areas of the properties involved in this case. The outlines found on this map, this is an outline of the boundary of the property taken by the Government in this action, approximately 5000 acres of land, and the line found at the top, here, is the northernmost line of the boundry taken. You will find some colored portions on the map. That is the property which is the subject of our action; some of it is marked in green, others are marked in yellow, and then in some other colors, and those are the properties which were covered by the oil and gas leases, and to which I am about to refer.

As I say, the function of a preliminary statement

to the jury is to outline to you as briefly as I can the scope of the proof and many things which we expect to bring out in the course [4] of the trial. When it comes down to disclosing to you and placing into the record all the relevant evidence in this case it becomes incumbent upon us to see to it that you ladies and gentlemen are supplied with all the information that you need in order to enable you to render a just verdict when you retire, a verdict that we should all accept.

We lawyers, of course, have grown up with the case, and we have studied all of the facts, and we are familiar with them as far as we are able to be familiar with them, but you ladies and gentlemen are called upon to pass upon a very intricate case without any background about it, so it would be incumbent upon us to make available to you all of the knowledge that we possibly can, so you will be in a position to pass upon this case.

Preliminarily, in the course of the trial we will prove to your satisfaction, I believe, that on or about July 24th, or July 22, 1944, the action which is now before you was filed by the Government. At that time there was in course of being drilled on the property known as the Mary Faria property, located on this map, and indicated in the complaint as parcel 59, a well, which well had been drilled at a depth of 4375 feet for the Cal Bay Corporation. The Cal Bay Corporation had acquired a series of leases from Joseph Faria, Jr., involving 687 acres

more or less, for the purpose of exploring what appeared to it to be a very promising structure which carried with it potential accumulations of oil and natural gas. [5]

These leases had been gotten together by Mr. Joseph Faria and one Bud Hildebrand during the latter part of 1941. The evidence will disclose that neither Joseph Faria or Bud Hildebrand were entirely inexperienced at that time in the business of petroleum and gas development and production. Both men were men of substantial means, with some experience in that business, and the decision to take leases on this structure was not a decision which was reached by them out of the blue of the sky, but was reached by them as the result of certain developments which were taking place in and about these properties, and certain indications which had been existing that had been disclosed on the property for many years before.

Preliminarily, I might say that beginning in the years 1932 and 1933, a large number of gas fields of natural gas were discovered in Northern California, and I am going to refer to you for the purpose of this preliminary statement another map here on the blackboard, which is known as Blandsford's Map of the Oil and Gas Fields of California. The spots marked in green found on the map are producing oil fields throughout California, Southern and Northern, or Central part, and these spots marked in red are producing natural gas leases in California.

When we look to the right-hand corner of the map we have a section of the map which starts primarily with the Central portion and on up as far as Tehama County, of California. You will notice, ladies and gentlemen, that there are very, very few [6] green spots on that map, that portion of California, but there are some very large red spots. I might state that these red fields are producing gas fields in Northern California. There is the Tracy gas field, the Vernalis gas field. We have the fabulously rich Rio Vista field, and then we have Honker Bay field, here, and we have the Suisun Bay district, and the Marysville Buttes, up north.

The property of the Cal Bay Corporation and Joseph Faria, Jr., on which the well was being drilled, is represented by the spot over here, and south of the Suisun Bay, marked in yellow, and it is just approximately south of the Honker Bay development, which is across the river by the Standard Oil Company property, approximately between three and four miles away.

These leases which were accumulated by Mr. Hildebrand and Mr. Faria were taken by them not only because of the development of these gas deposits in and about the property, because in and of itself such a development would not warrant a reasonable conclusion that gas or oil would be found underneath the property of the Faria family, but there were other indications which made the property very promising, and those indications are gen-

erally the indications that geologists and petroleum and gas men look for when they go out prospecting for locations. I say, generally speaking, that the indications they would look for, among them would be the question: Is there any natural [7] seepage or outcrop which would indicate accumulation of petroleum on the property. That would be one indication. Another indication would be: Is there a structure on the property, and by a structure is meant what is generally known as a trap or a geological formation which serves for the purpose of trapping petroleum and gas and preventing it from escaping. It is simple for me to talk to you about a trap, but the experts will describe it to you in the course of the evidence. It is something that is very important in the accumulation or production of gas. In order to give you, ladies and gentlemen, an idea what might be a trap, I will refer to this map, here; you will find on the photostatic copy of the map, the black portion, you will find certain drawings in the form of an anticline with several stratas shown thereon, and then those certain formations to the right, here, with these over here. Those are what forms the trap. They trap oil and gas. I might say for the benefit of you ladies and gentlemen that a trap can consist of what we call an anticline. The anticline is a geological formation wherein as the result of a fold occurring in the earth's surface and the strata covered by a earth formation would be deposited there, there would be folded upwardly or

in some cases dug in this fashion, as shown on this area (indicating on map), and the structure is closed on all sides and serves as a trap where the oil and gas accumulate, and which can no longer escape until something happens, as in our case the tapping of the structure by the well. There [8] are, in addition to anticlines, many other different types of traps. We have traps caused by faulting, sliding of the earth, whereby the continuity of the formations would be interrupted, so the formation found on one side of the fault does not correspond with the formation on the other side. The interruption can cause what is known as an entrapment.

In addition to looking for these traps and the outcrop and seepage, geologists will look for the existance of sources of petroleum and gas by looking for the existance of sedimentary rocks, "Sedimentray" means, of course, exactly what the word implies, formations of rocks which have been deposited there as the result of erosion or sea bottom deposits. To determine or discover commercial accumulation they look for the existence of whole drainage areas and, of course, the reasonable contamination—the structure if it exists there will have been filled with a reasonable amount, commercial amount of oil and gas from the surrounding territory, in order for that to exist. They look for proper hydrostatic conditions to force this oil and gas into this structure, and at the same time not force it out. Then again they were looking for

conditions which are not antagonistic to the presence, naturally, of oil and gas, such as too much faulting, or metamorphosed rock. All of those formations geologists and petroleum engineers generally look for when they go out. Those exist and have existed, of course, for many years, for centuries, on the properties which are the subject of this [9] litigation, and in the course of the trial we will prove to you that over 25 years ago the property of Mary Faria, one of the defendants in this case, on that property there was caused to be drilled a water well for domestic use. The water was so contaminated by petroleum that it had to be abandoned. A few years later a well was drilled on another portion of the property. It was drilled down about to sixteen feet, and such a formation of gas came up that it was lighted and that well has continuously been lit up day and night for years thereafter, and is still in existence on the property. It was there when the Government took it over.

Incidentally, the evidence will disclose that the gas well, the gas seepage and the petroleum seepage were approximately 600 feet and 1500 feet, respectively, distant from where the geologists picked the location for the drilling of the Faria well.

Mr. Faria and Mr. Hildebrand, being both men of experience in this business, and having learned of the development of oil and gas fields all around the territory, and seeing these indications on the property of commercial accumulation, came to the

conclusion there was a reasonable probability or possibility, let's put it that way, that there was evidence of commercial accumulation on the property—Mr. Faria and Mr. Hildebrand then went around and got leases, and they got leases on practically what appeared to be the entire structure, [10] other than about 1700 acres of land which lies somewhat to the south, and is shown on this map, here, about right here, and it is called the Walter Keller property. That Walter Keller property lies within the general structure here but it happened that just when Mr. Faria and Mr. Hildebrand decided to go after leases on this property, the Standard Oil Company suddenly began to look with favor upon these various properties, and they went around offer leases to the Standard Oil Company. Then, after the Standard Oil Company drilled its Keller No. 1 on the property of Walter Keller down to about 4100 feet, it was subsequently abandoned for reasons which will be disclosed to you during the trial, reasons, as well contend and attempt to prove, reacted favorably on the property of Mr. Faria.

When Mr. Faria and Mr. Hildebrand got these leases together they took leases on about 2000 acres of land, about 2100 acres of land altogether. Among the lessors was the property of Mary Faria, of about 440 acres of land which extends just approximately as indicated to you here by this map, and upon which property was located this gas well and the abandoned water well which had been contaminated by petroleum. They took also two small pieces of

property in this Mary Faria piece known as Parcel 57 and Parcel 58. Parcel 57 is owned by Mae E. Dutra Roche, who is one of the defendants here, and Parcel 57 of about 5 acres is owned by Edward Faria. They are the children of Mary Faria, and these two small pieces of [11] land with Maria Faria approximates 450 acres of land on that particular piece of property, itself.

In addition to that, Joseph Faria obtained a lease from Manuel V. Alvernaz of approximately 310 acres of land, the property I am indicating to you now, and he obtained a lease from his own mother, Geraldine Faria, comprising 228 acres, approximately, which is Parcel 64 in this complaint. In addition to that there was a lease obtained from Ralph P. Bollman, of approximately 771 acres, which is the property that I am indicating here, extending this way and up here. The Keller property was taken by the Standard Oil Company, that is to the right and over here to the very southern most end of the structure.

The we have a lease by Joe Chavez, 414 acres of land, to Joseph Faria. That altogether approximates 2100 acres of land.

The Cal Bay Corporation was thereupon organized by a group of businessmen headed by Mr. Faria and Mr. John Knox, of Stockton, and other merchants, and to the Cal Bay Corporation there were assigned 687 acres of these leases, consisting of the property of Maria Faria, Manuel Alvernaz,

Mae Dutra and Edward Faria, and of this Mary Faria property 73 acres were kept out of it by Joseph Faria, located up here, 73½ acres from the Mary Faria property, all of the Geraldine Faria property, all of the Ralph Bollman property, here, and all of the Jose Chavez [12] lease, and the Cal Bay Corporation received what appeared to be the very top of this structure, consisting of about 687 acres, which in the oil business is sufficient to warrant the drilling of a wildcat well.

With that having been done, Cal Bay Corporation went before the Corporation Commissioner in the year 1942 and obtained a permit for the sale of 50,000 shares of stock at \$1 par. The sale of stock was made. The \$50,000 was raised, and I forget exactly the date, but sometime in the month of July, 1943, or thereabouts, the drilling of the Faria Well No. 1 was commenced.

Mr. Hildebrand and Mr. Faria did not pick the location for the drilling of the well. They were not men possessed of that much experience. But before they would spend any of their money and their people's money, they went and hired a geologist and petroleum engineer, whose reputation, in the judgment of his colleagues, is second to none, Mr. Byron Norris, who was formerly connected as petroleum engineer and geologist for the Corporation Commissioner of the State of California and who has done a large amount of work studying structures and making geological reports and investigations for

petroleum and gas companies. Mr. Norris came up to these properties and spent several weeks in studying all the formations, all the indications, the seepages and the structure that I have told you about, taking measurements of the dips to ascertain whether or not an anticline or a closed structure existed there, and primarily for the purpose of studying all of the wells drilled on the surrounding gas fields that I have told you about, to determine the nature of the formations found there and then ascertaining whether or not the formations which were found on the gas fields producing around the Cal Bay property could reasonably be expected to be found also on the property of Cal Bay Corporation, and after many weeks of work, Mr. Norris came to the conclusion that this was a closed structure and that the geological basis of it was favorable for the accumulation of petroleum and natural gas, and that the [13] cost of drilling the well to the formation which he expected to reach wherein the accumulation would be found productive would not be exorbitant, and he recommended to the Cal Bay Corporation that a well be drilled on the property of Mary Faria, approximately six hundred feet from where the gas well had been drilled twenty or twenty-five years before and had been draining all those years.

At the same time he reported that in his opinion the property owned by Keller was unfavorably located for commercial accumulation, and on the basis of that report, Mr. Joseph Faria did not bid

against the Standard Oil Company and allowed it to take that portion of the structure.

Now, the well started and went along. It had the usual troubles you will ordinarily encounter in the drilling of any wildcat well. We, of course, were engaged in a war. Materials were hard to get and men were hard to get and, of course, the cost of drilling a well under those circumstances would be a little higher than normally would be found. But the drilling proceeded according to expectations. Cores would be taken of the formations penetrated at regular intervals, and those cores would be checked by Mr. Norris and paleontologists, specialists in their lines, for the purpose of ascertaining the formation through which the bit was drilling and correlating those formations with the formations found in a producing gas field like McDonald Island, Rio Vista, and the rest of them, [14] and it was found that the geological sequences of these formations were normal in every respect, which was a very good indication to Mr. Faria and to Mr. Norris, who was the supervising engineer in charge.

It so happened that when the well reached approximately forty-three hundred feet in the month of October, 1943, very strong indications of natural gas began to appear in the course of drilling the well, and those indications manifested themselves in gas appearing in the mud which was coming out of the well as a result of the drilling and shooting up in the ditch, and also the shale would surge and heave up and down, and the pressure would in-

crease. Now, it became so prominent and so strong that it was decided to make certain tests which are ordinarily made in the course of drilling these wells, and the tests which were made in this case were the running of what is called Schlumbergers—they are technical tests which the experts will explain to you—a temperature survey was made, another technical test, and then certain formation tests were made, the Johnson formation tests, and all those tests had for their objects the determination of whether or not the formation from which these indications of natural gas were coming to the surface was capable of being placed on commercial production, and which was ascertained as the result of two Johnson formation tests. 100,000 cubic feet of gas per day was the result of one of those tests. There were three Johnson formation [15] tests, altogether. In the third test made October 27, they received indications of 125,000 cubic feet of gas per day, and it was determined at that time that that would not be sufficient to warrant placing the well on production at that level, but because of the developments which were going on all around them, especially the bringing in by the Standard Oil Company of the field at Suisun Bay and Honker Bay just across the river from Cal Bay Corporation, and as a result of the abandonment by Standard Oil Company of the well on Keller Hill and a study of the logs of all these wells correlated with the well being drilled by Mr. Faria and the Cal Bay Corporation, Mr. Norris concluded that the formation which would be productive of natural gas in

commercial quantities in the Faria well, judging from the logs of the wells in the surrounding field, would be found at approximately forty-nine hundred feet in depth or approximately five hundred feet deeper than where they were at that time. This was some time in the month of November 1943.

Winter was coming along. The corporation had spent all the money which it had accumulated for the drilling of the well, and so they decided to suspend drilling operations for a few months until they were able to raise some more money and get together additional material and equipment to continue drilling. Cal Bay Corporation had to go before the Corporation Commission and receive additional permits for the sale of stock, which [16] was done in the spring of 1944; the necessary crews and equipment were gotten together and on July 8, 1944, the well again started to be drilled and drilling went along gradually and methodically, according to schedule, until July 25, 1944, when out of the blue of the sky an order came from this Court directed to the owners of this property and to Cal Bay Corporation, stating that the properties upon which this well was being drilled was part of the property sought by the United States and ordering, of course, that the United States be placed in possession of the property. Among the properties so sought were 210 acres or thereabouts, of the Mary Faria lease, including the very location upon which the well was in the course of being drilled, as was also all the property of the Edward Faria

lease, the Mae E. Dutra Roche lease, and all the property, other than about forty-nine acres, of the Bollman lease, and practically all of the Joe Chavez lease. The order did not include the property of Geraldine Faria, except a small piece of about a half-acre, and did not include the Manuel V. Alvernaz lease, but inasmuch as it did include the property on which the well is being drilled, it became necessary to stop operations and ascertain, Where do we go from here?

I am going to beg your indulgence, ladies and gentlemen of the Jury, if I seem to be dragging this out a little longer than ordinarily, but the matter is of sufficient importance [17] to warrant my taking a little longer to bring you up to the very end of the situation.

As soon as this order was served on the Cal Bay Corporation it retained the firm of Fitzgerald, Abbott & Beardsley, of Oakland, to represent them, and Joseph Faria and Mr. Norris sat down with the representatives of the Navy, which had sponsored and asked for the condemnation of the property, and held some conferences with them at Mare Island and San Francisco, and placed before them the results of the drilling of the well up to that time and their recommendations and expectations, and as a result of those conferences, Commander Ernest E. Williams, acting for the Commandant of the Naval District, on or about August 15, 1944, wrote a letter to the attorneys of Cal Bay Corporation, wherein and whereby substantially they agreed to

permit Cal Bay Corporation to continue drilling this well for an additional 2,000 feet, provided that it could be completed within a certain time. We will prove that the letter never fixed any specific time. I assume it meant within a reasonable time. But in reliance on that letter of authorization, Cal Bay Corporation went out and got together enough men from all the oil fields of California and put on three crews and worked three shifts a day, and went out and bought about six thousand feet of casing and started to drill, and continued drilling until December 15, 1944, and on December 15, 1944, it received a notice to get out of the property within thirty days [18] and to abandon the well.

Now, in and of itself that would not have added anything to the developments prior to the condemnation suit, but it so happened in between August 15, 1944, and December 15, as the result of the continued drilling of this well, when it got down to 4,973 feet, a tremendous volume of gas began to come out of the well. It appeared on the ditch. Buckets of sand could be picked out of the ditch. And by applying a match to that sand it would burn brightly, and the pressure of the gas was pressing the mud to the point where it could not be kept under control, and Cal Bay Corporation had to go and hire a specialist from the Baroid Sales Division of the National Lead Company to come up and build up their mud to a weight of 115 pounds per cubic feet. That is a rather technical situation which will be explained to you by the experts. Prac-

tically speaking, it means that when you build up the mud which is used for the purpose of cementing off the well, as you drill down to a weight of 115 pounds per cubic feet, it means that for every foot of mud in that drill pipe of 4,973 feet there was a weight of 115 pounds per cubic foot, that weight was necessary to keep the pressure of this gas coming up from underneath under control, and still it was not enough to do so, and this well on November 29, 1944, at about eleven o'clock a.m., blew in with a tremendous volume and roar of gas that scattered petroleum all over the derrick, and at the end of two hours it [19] was brought under control.

Now, the result of the well blowing in that way collapsed the casing, and in trying to get into the casing for the purpose of continuing the drilling, it was found that the drill pipe would not go through and that circulation could not be regained, and so they went out and hired another specialist from down south to come up here and see if they could not start the job. Mr. W. C. Bradford was hired for the purpose of trying to find what happened to this casing. They found the casing had collapsed at about the forty-one hundred foot depth, at the very place where a window had been built out of it some time previously for the purpose of whipstocking the well to get down to this new depth. "Whipstocking" is a technical operation which will be explained to you by the experts, but it suffices to say that Mr. Bradford was not able to get through this collapsed casing. This was about the end of

November, 1944, and as I said before, on December 15 the Navy served them with notice to get out within thirty days, and in the meantime, to abandon the well that they were drilling, which involved another extraordinary expense.

In the course of the trial it will be disclosed to you that the Navy, acting through the plaintiff, acting through its attorneys of record, stipulated with my clients that the date of the taking of possession of Parcels 58 and 59 pursuant to that stipulation should be the date fixed for fixing the [20] compensation, and in this case the possession of Parcels 58 and 59, which is the Mary Faria property and the Mae E. Dutra Roche property, or, rather, Edward Faria, in January 15, and January 15 is, of course, subsequent to that blow of gas which we had on November 27, 1944, which we contend establishes for a fact that the commercial accumulation of natural gas in the property of Mary Faria, and we are here today to establish to your satisfaction what we consider to have been the fair market value of those leases on that date, and we respectfully submit and we will strive to prove to your satisfaction that we had established a discovery of natural gas on these properties, and that these leases owned by Cal Bay Corporation had great value, and in that respect I might state that Cal Bay Corporation claims the following in its answer to the complaint:

Of the 687 acres held by it under lease—not all of it was taken by the Government, but as to the

portion which was taken by the Government—Cal Bay Corporation claims that the fair market value of that portion, which is the portion of Mary Faria, Dutra, and Edward Faria, and a small piece of Geraldine Faria, including the value of the improvements which had been built on the property, in this case the well, was \$468,750. In addition to that, it claims that its leases on the remaining property not taken by the Government were rendered of less value than they would have been had not the Government taken the portion actually taken by it, and that [21] that damage it estimates to be \$150,000, so that the total amount claimed by Cal Bay Corporation in this case is \$468,750 for the property taken, and \$150,000 damages for the property not taken.

Joseph Faria, Jr., claims that the value of that portion of the lease taken away from him, which includes about 73 acres of the Mary Faria lease, and about 139 acres of the Ralph Bollman lease, and some of the Joe Chavez property, had a value of \$38,750, and that, as to the remainder of the property held by him on the lease and not taken by the Government, which consists of 49 acres or thereabouts of the Ralph Bollman lease and the Geraldine Faria lease, was damaged in the sum of \$31,850.

In addition to that, the lessors, Mary Faria, Mae E. Dutra Roche, and Edward Faria, claims that the royalties which had been reserved by them in their leases were the equal of one-eighth of all natural

gas and oil produced, saved, or discovered on their property, that that royalty interest was worth on the date of the taking, in the case of Mary Faria, \$75,000 and that the damage to her royalty interest in the property not taken was of the amount of about \$35,000, or a total of about \$105,000.

In the case of Edward Faria and Mae E. Dutra Roche, respectively—all of their land was taken by the Government—in each case approximately five acres, and each of them claim [22] the value of their royalty interest in those 5-acre parcels to have been the sum of \$3,500.

We will now proceed to disclose to you, ladies and gentlemen, the facts upon which we predicate our claims in this case.

The Court: Do you wish to make an opening statement, Mr. Bourquin?

Mr. Bourquin: I would like to make a statement, your Honor. I would like to make it now. It will take me about fifteen minutes.

The Court: We will take the afternoon recess first. Ordinarily, ladies and gentlemen, we take a recess in mid-morning, during the period when a case is on trial, and another recess in mid-afternoon. We ordinarily hold court from ten o'clock in the morning until noontime, and then reconvene at two o'clock in the afternoon, and hold court from anywhere between four to four-thirty, occasionally a little later, if it is necessary to dispose of a witness. We take these recesses in the middle of the morning

and in the middle of the afternoon, because experience has taught us that jurors as well as lawyers and the judge sometimes get a little weary of sitting in the same place for too long. Sometimes tempers get a little frayed, and the five or ten minutes we take off we find in the long run is productive of the best results. During these intermissions that we have, it is the duty of the Jury not to converse among themselves nor to permit any other person to address [23] any member of the Jury upon any subject connected with the trial of the case, nor to form or express any opinion concerning the case until the case is finally submitted to the Jury for decision. We will take the afternoon recess at this time.

(Recess.)

The Court: Mr. Bourquin, attorney for the United States in this matter, wishes to make an opening statement on behalf of the Government.

Mr. Scampini: If your Honor please, I have given a copy of this map to counsel on the other side. It may be that your Honor will want to follow it. It is one of the maps on the board.

Mr. Bourquin: If your Honor please, and ladies and gentlemen, I thought that the gentleman on the other side had, wittingly or unwittingly, laid an unnecessary amount of stress on the complexities of this case, so as to preface my own statement I shall offer to you the view that if we get down to the facts of the matter, the case is not very com-

plex. I think if we will, as his Honor will charge us here to, direct our attention to the property in question and search for its market value, which you must fix, we will find it more simple than has been outlined. I do not think we can do that by attempting to appraise the property at Rio Vista or over at Tracy or by what academic studies would tell us the property [24] ought to have contained, but I think we can do it under the circumstances here if we get right into the property, as the defendants themselves admit they had done, and deal with the facts as they were found. In other words, I think it is a property that has to be analyzed and appraised, not from the surface of the ground as if that were unbroken, but from the standpoint of what lay underneath. They admit to you they had explored the ground to a depth of 5,000 feet. If there is any theorizing to be done to substitute for facts, let us get down to the 5,000-foot level and start theorizing from there. It can be just as readily done, more easily done, in fact, than if we were to shut our eyes to the fact that the property has been explored and treat it as if it lay off in Alaska somewhere, where it had never been touched by a drill or a pick.

At the outset, I think it would be well that it be made plain the Government here is not now and was not in the institution of this proceeding attempting or seeking to acquire any oil or gas. It was not seeking any oil or gas or other mineral reserve. It was not seeking and had no use for any

oil or gas right or any oil or gas, even by the bucketful, and I want to say to you, to clarify the matter at once, that the Government upon the data submitted to it by the defendants, and additionally by independent studies which it caused to be made, not by Government men, if we are going to hold them suspect, but men [25] not in the Government service at all, is convinced that there is not any oil or gas in the said properties, the subject of this suit, except in token quantities, such as you may find throughout the north bay area, up the Sacramento Valley, nearly anywhere. It does not believe but is convinced that there is no oil or gas in the subject properties that would possibly pay the cost of producing the same.

These properties, the subject of the suit, constituting five parcels, and as the gentleman has correctly said, aggregating about seven hundred acres, or thereabouts, are properties that lie back in the hills from Port Chicago. Some of you East Bay people will identify them more readily. They are properties which lie back in the hills which the Government sought and took by the process of eminent domain. We call it condemnation. That is a devil of a word, but it means only that the Government is requiring the owner to sell it because the Government has to have it. It is a sale with a different element in it only that the owner must sell now, when the property is needed. These parcels were a part of, I think, 5,400 acres of the property back in those hills which was taken and

for which suit was brought on the date counsel mentioned in July, 1944, to provide a safe storage place for the ammunition and explosives that were being shipped and would be shipped to the Army and the Navy in the course of the war in the Pacific from the shipping port which had been established [26] the year before. You will recall that, because a loading ship blew up at the dock over there and raised the devil around Port Chicago, a loading port which had been earlier established. These properties were to provide the warehouse behind that shipping port for those purposes.

The matter of these 5,400 acres reminds me of the annoyance—and I can sympathize with it, because I have seen lots of instances of it—that the lady who sat here the other day spoke about. Her property was taken some years ago and for some reason or other she has never been paid for it yet. But of the 5,400 acres in this case, this interest encompassing 700 acres is all that remains. I think the rest has been settled out with the exception of a few, the owners of which came into this court and Judge Goodman settled their interests for them and disposed of them, and I think—I was going to say I hope by this time all have been paid.

In this case the Government made an appraisal of all 5,400 acres through San Francisco and Oakland real estate appraisers. I think the average price over that whole area averaged around \$175 or \$200 an acre. Some properties ran much higher

than \$200 an acre. Some properties have run down below \$100 and some favorable properties ran much higher than \$200. I think it is proper to state that out of the whole 5,400 acres none of the other numerous owners of all the other properties asserted any oil or gas claims except these three, which they are entitled to assert. In the [27] case of these properties, so we will have the issues defined, the properties in a real estate sense have been paid for. In other words, along with the others the various people, the group, as I term them, represented here, which includes all except Mr. Bollman, and Mr. Bollman's claim has been settled out because his was one which was settled by the Court and did not claim any oil or gas values—in these properties the Faria people settled with the Government and have received their money for the value of the property as real estate. Apparently there was no difference of opinion there. Stipulations were signed and filed. But they asked, and the Government agreed, that they might reserve the right to assert the claim of oil and gas values, and it was agreed, "We will close up the real estate and that is left." So by that process there was left in this case only the mineral, the oil or gas values, if there be any, in these particular properties, for determination; so that when we come and you come to appraise the evidence and to appraise the value, you will be appraising only the value, if any, that was in those properties additional to the real estate and repre-

sentative of what they were worth for oil or gas developments.

I want to say just a word about the history of the property, because I think the history of and property is interesting in ascertaining its merits and its values. As Counsel has stated to you, some time in 1941 Mr. Faria, one of the Faria's took [28] leases on these properties, mineral, oil and gas leases. In 1942 or thereabouts, they incorporated the company, the Cal Bay Corporation, a stock company. I think it was said that they had issued stock in the sum of \$15,000 at first, and in the sequence of recital they had later gotten the geologist's report, but I believe the facts will show you, and I would assume and you would assume that is the only way a corporation commission would operate to allow people to go out and sell stock, that they got the geologists report first. He wrote them his analysis of the potentials of the property—unexplored, mind you, and this is in 1942—and with the aid of that before the Corporation Commissioner, they obtained leave to issue and sell stock, and stock was issued and sold, and in 1943 Mr. Faria brought his own rig to the property from Santa Cruz, I think, where he had drilled a while earlier, and by arrangement with the Corporation Commissioner they drilled from a time in July until a time in October—and I think the drilling operations will almost exactly amount to three months—they drilled 4,375 feet in three months, or

something like 1,500 feet a month. As they got down into the depth they encountered gas signs. They encountered heavy pressures. Gas fulminated up in their circulating mixer that they call mud from the hole and appeared on their ditch, and they encountered that not once, but either two or three times, so when they had reached the depth of 4,375 feet they pulled out, cased [29] the whole depth, put the casing in, which would be putting in a sleeve of concrete-reinforced metal in the whole, and when that was done they brought in the scientific tests that he mentioned and they made tests, they had gas alright. They made repeated tests, once in October, and then they perforated their casing in another place and made a new series entirely and they obtained on instruments that the experts say are quite reliable test results of 100,000 cubic feet a day in one instance of gas and in a later instance I believe that was higher. I think they came up the casing and made another series. They shoot that casing like you would with a pistol. It has a series of valves around it like the fingers of your hand. I am offering this to somebody who does not know anymore about it than I did when I started studying this case. They shoot holes through it with bullets. When they have their avenue through they insert instrument. Mud is lifted off with their tackle, a plug. They make their tests and they get what is there. They got at the 4,375-foot level 100,000 cubic feet of gas at one time. That is the volume per day. They got 125,000 cubic feet another time. In order that we may

know what that would mean, I think it is fair to say that it will appear even today at a better time that gas would sell at the well head to one of the pipeline companies, if they would come in and tie it in, for 10 cents a thousand cubic feet or, in other words, the first test there of 100,000 cubic [30] feet per day showed that they had gas that they could sell for \$10 a day, and that on the subsequent tests a few days later, when they improved it, they found that they had a gas that would sell for \$12.50 a day, 125,000 cubic feet.

Well, the scientists went home. They quit. They said they suspended. That was October 27, 1943.

In 1944, as was told to you, the Government went in there and instituted this action to provide this explosive storage yard.

The Judge of this Court made an order at the time the Government went in, as in the case in all condemnations, to serve the public necessity, requiring all the defendants, not just the Faria group, but all the owners in the 5,400 acres, to surrender up the property in the Government and allow it to be put to public use, and to come to court if they could not come to terms. That is the procedure. You know that. When that order was made the Faria people appealed to the Government authorities in charge there for an opportunity to explore further, or I will put it in my version, to see if they could not show some value, and they went along with their exploration.

Now, I believe it to be the fact that will appear

that they had gone back to that well and resumed the exploration on July 8, 1944. That was before the Government's right to possession or the Government's action was instituted. From that [31] date, July 8, 1944, until January 15, 1945, six months and seven days, they made exactly 600 feet further progress ahead down, or approximately 100 feet a month. In the course of that they found more gas fulminating up on their ditch, heavy pressures like they were in 1943, were again reacted. I think the similarity of those signs in 1943 and 1944 will have a bearing. And in that respect the cores were about the same as the 1943 cores, except, of course, we must not forget the differential in the rate of progress made. But it will appear in that exploration of 1944, during those six months, everything happened to them that should not have happened. Everything that an oil man could think of that should not have happened on that operation happened to them. They stuck their drill pipe that rotates in the hole repeatedly. They pulled it apart at a depth on one occasion, were unable to recover the bit and the collar in a lower piece, had to back up from where they were then at about forty-eight hundred feet to where they had started in July at 4,375 or thereabouts and cut a window in that casing they put in there before—and when I say “cut a window”, they leave a portion in the bottom that they could plug up to, shut off the hole that has been messed up at the bottom. and then above that

plug they will go out of the old casing down on a tangent using what the oil fellows call a whipstock, just so they can go ahead. They can't go through that part which has been messed up. They went down [32] there. I think they found their signs again about the same level they had. They stuck the pipe again. They closed the well down repeatedly for a matter of days. One time it was down for more than twenty days, just closed. It will take the men who have the knowledge of these things to explain it to you, but as an accumulation of those things their mud—that is the circulating fluid—degenerated, backed up. They did not control it with their mud. They did not control the gas and salt water seeping in. It backed up, and finally, on November 29 it kicked out at the top. It kicked mud up on their derrick, kicked mud out on their ditch, and they found gas fulminating through that mud. They had found it before. Then, as counsel said, it took two hours to bring the well under control. I think there was a time in 1943 when they had trouble with their mud. It took them about five days to bring it under control again, bringing it under control and regaining their circulation. This pipe is not left down there. You bring it out periodically to sharpen the bit on the end of it. They were attempting to free the pipe in any event. The pipe was not on the bottom at the time this mud blew out on November 29. It had been pulled up and stuck, was damaged a couple of hundred feet off the bottom.

They were not at the bottom of the hole they were making then. They were 200 feet above. When they went to attempt further to free the pipe they found they could not get any pipe above that window [33] The pipe was thoroughly stuck at the window. This, I think, was a matter that developed with them on the 29th, 30th or 31st. From then until the 15th, I suppose it is fair to say—the Navy had taken a pretty good kicking around here—they had some discussions with the Navy about what they were going to do. Mr. Faria didn't know what he wanted to do, because he couldn't say how much time he could do anything there. The Admiral at Mare Island told him, "We gave you an open stipulation. We have to have you out. We agreed with you to give you thirty days notice when we let you go ahead. Now we will give you the thirty days' notice and you fellows will have to turn over to us on January 15."

There was no further effort made on their part—well, I think there was an effort made by them to free that pipe and recover it by the use of heavier pumps than they had been employing there at the time on the 29th and 30th, but except for that there was no way to do anything, to cut any new hole or do anything with it, and on January 15 they were out.

I do not mean in outlining these facts to you that we want to advance to you any opinion or attribute any design or anything else. We want you to draw your own conclusions from these facts. So far as the questions of value go, these people have been

paid and fully paid—they were satisfied—on the same basis that everybody else up there has been paid. They believed, or at least, they contended and they say they [34] believed they had something else in the ground they wanted to evaluate. I suppose it will appear that for a matter of a few years up there, there has been wildcat speculating—not speculating in the sense of some broker coming in and tying up leases all around there, oil and gas leases. It may be anyone must conclude that the property, even after the 1943 exploration, which their own tests disproved, would say somewhere—not the place where the hole was drilled—there was property that still had some speculative value in the market. If they did, they are entitled to it, but as I said to you at the outset, I believe, and we want, if we can, to confine ourselves to these facts, that there is no reason, none has been shown, and I have not heard any stated, I do not believe, here today, to believe that those properties, after the full exploration that was had there, have any oil or gas possibilities that would justify anything but the purely speculative value which someone who might come in your yard and tell you, “We hear a rumor that your land is valuable. If you will let me tie your property up for a year, I will give you one-eighth of anything I can get out of it.”

Thank you for your attention.

The Court: Do you wish to call your first witness?

Mr. Scampini: Mary Faria. [35]

MARY FARIA

called as a witness on behalf of the defendants; and being first duly sworn, testified as follows:

The Clerk: Will you state your name to the Court and Jury?

A. Mary Faria.

Direct Examination.

By Mr. Scampini:

Q. Mrs. Faria, where do you reside? Where do you live?

A. I live—do you mean my place—

Q. Just give us your address?

A. The address? Excuse me. Excuse me.

The Court: She lives in California some place?

Mr. Scampini: Yes.

Q. You live over in Concord, don't you?

A. Yes, Concord.

Q. How long have you been living there, Mrs. Faria? A. Forty-six years.

Q. Are you the owner of some property over in the hills above Concord? A. Yes, sir.

Q. Are the properties which you own over there the properties which are subject to a lease to Mr. Joseph Faria? A. Yes, sir.

Q. When did you acquire the property, Mrs. Faria?

A. Forty-six years ago I lived there. That was my home.

Q. You lived there with your husband?

(Testimony of Mary Faria.)

A. Yes, sir.

Q. Your husband was named Antone Faria?

A. Yes, sir.

Q. And you raised your family there, did you not? [36]

A. Yes, sir.

Mr. Scampini: I am wondering counsel, if you going to expect me to prove the origin of the title of these properties?

Mr. Bourquin: Oh, no, not at all. I do not think we need spend any time on that. The only question we ever raised at all on the matter, your Honor, was the question that we raised when we were troubled with the problem of the method of proof here, but I am not so sure as to that yet. I do not think we need spend time on these leases or anything else. We are dealing with one property. Go right ahead and we will save time. [37]

Mr. Bourquin: Yes.

Mr. Scampini: I show you here lease of August 11, 1941, I will ask you to look at the signature which is found here.

Mr. Bourquin: That is just what I meant to say. We will stipulate with you, if you want to stipulate, in regard to the effectiveness of the lease from Joseph Faria to Cal Bay; for the purpose of the case, we will stipulate to that.

Mr. Scampini: Yes.

The Court: Do you wish that stipulation, counsel?

Mr. Scampini: Yes. I just want to identify the

(Testimony of Mary Faria.)

lease for the purpose of asking a question in respect to some developments on the property.

The Court: The lady will understand it better if you will just tell her that such a lease was made on such and such a date by her to the corporation—is that it?

Mr. Scampini: Yes.

Q. Mrs. Faria, did you on August 11, 1941, execute a lease to approximately 441 acres of land owned by you to Joseph Faria, Jr.?

A. Yes, sir.

Mr. Scampini: Now, I offer in evidence, may it please the court, as our exhibit first in order, the basic lease by Mary Faria dated August 11, 1941.

Mr. Bourquin: If you think it is necessary, we have no objection to it. As I said before, we won't raise any question [38] of the fact that Mrs. Faria is the owner of, if you will identify the parcel and the lease on the property, if it was to Joseph Faria, and if it was to Bud Hildebrand and was subsequently transferred to Cal Bay Corporation by them, we won't make any question on that.

Mr. Scampini: Let's proceed along that line. I will ask the record disclose that on August 11, 1941, Mary Faria, a widow leased to Joseph Faria and Bud Hildebrand that certain real property lying in the County of Contra Costa, State of California, being Lot 2, Section 21, Township 2 North, range 1

(Testimony of Mary Faria.)

West, containing 38.72 acres more or less; portion of Lot 1 and southeast quarter of northwest quarter of Section 21, Township 2 North, Range 1 West, containing 76.64 acres; south one-half of northeast one-quarter of Section 21, Township 2 North, Range 1 West, and West 12 acres of south half of northwest quarter of Section 22, Township 2 North, Range 1 West, containing 92 acres, and Lot 3 and fractional southeast corner of Section 21, Township 2 North, Range 1 West, containing 155.51 acres more or less, and the north half of northwest quarter of Section 21, Township 2 North, Range 1 West, containing 80 acres more or less, and containing 440.87 acres in all.

Q. Now, Mrs. Faria, when did you acquire this 440 acres that you leased to your nephew, Joseph Faria, when did you buy it? A. 25 years ago.

Q. When you bought that property did you know anything about [39] the drilling of any well on that property?

A. Well, at the time I bought that place the neighbor of mine, there is a well here, and every time I went over and I tried to drink the water the water taste like kerosene, and we never used the well any more.

Q. What happened to that well?

A. It is there. We never used it.

Q. When you bought the property did you notice

(Testimony of Mary Faria.)

anything peculiar about a certain place on the property? A. Yes.

Q. What did you notice?

A. Well, same place they are all dry, nothing growing, and all burnt up around the place by the house there.

Q. What did you do when you noticed that?

A. Well, my son tried to find some place to drill. They found some gas there.

Q. They found gas there. How many years ago was that done?

A. Maybe 25 years ago, I think.

Q. What was done about that well, what did you do? A. Well, which one you mean?

Q. The gas well.

A. Well, my husband and son drilled and put a little case there, and started burning gas.

Q. How long did it burn?

A. It burned all the time if you don't put it out.

Q. Was it there when you made the lease to Joseph Faria, Jr.?

A. Yes, it was there for years.

Q. Did you have any negotiations with any oil companies before [40] the making of this lease to Mr. Joseph Faria and Bud Hildebrand about leasing the property?

A. Yes. Some people went there and asked for it, and after Joe got the lease three fellows was

(Testimony of Mary Faria.)

there, want me to break the lease for three months, and I didn't get the fellows' names.

Q. Do you know what companies they represented? A. I think it says Shell.

Q. Shell Oil Company? A. I think so.

Q. Mrs. Faria, after the lease was made by you a well was drilled on the property by the Cal Bay Corporation, was it not? A. Yes.

Q. Do you know anything about that well, yourself? A. What you mean?

Q. Did you watch the drilling of the well, Mrs. Faria? A. Oh, sometimes.

Q. When the Government filed the condemnation suit did you have some negotiations with the United States Government, the plaintiff in this case, concerning the payment to you of the value of your property? A. When?

Q. You had some negotiations, did you not——

The Court: Why don't you ask her if she talked with someone? She doesn't understand you.

Mr. Scampini: Who conducted the negotiations with the Government about the payment to you of the value of the property, was it you, or your son?

A. We, altogether. [41]

Q. Altogether? A. Yes.

Q. In the course of those negotiations you met agents of the Government, did you not?

A. Yes.

Mr. Scampini: It is true, is it not, Counsel, that

(Testimony of Mary Faria.)

the stipulation to which you have referred is a stipulation whereby the fee or title of the property which is embraced in parcel 59 was taken by the Government subject to a reservation by Mrs. Faria of the value of her royalty interest as derived by the lease?

Mr. Bourquin: Any oil or gas interest that might be contained, yes.

Q. (By Mr. Scampini): Have you any opinion as to the value of the royalty that you reserved in the lease of July 22, 1944?

A. I don't know what you say.

Q. Do you know what the value of the royalty of that gas under the lease was on July 22, 1944, when the suit was filed by the Government?

A. I think it was one-eighth.

Q. You had a one-eighth royalty? A. Yes.

Q. Have you any opinion as to how much that was worth on the day when the Government filed the suit, how much it was worth in dollars?

A. You mean in the place?

Q. Yes, on your property.

A. Well, I thought \$110,000.

Q. You figured how much? A. \$110,000.

Q. Did you figure the value of your royalty at so much per acre? A. Yes. [42]

Q. How much per acre did you value your royalty? A. That is hard for me to say.

Q. Did you have any conversation with anybody in the business about the subject of your royalty?

A. Well——

(Testimony of Mary Faria.)

Mr. Bourquin: Doesn't that call for hearsay?

Mr. Scampini: I suppose so, your Honor, I will withdraw the question.

The Witness: Well, I just have to——

The Court: Well, aren't we going to get the testimony from experts?

Mr. Scampini: All right, your Honor.

The Court: While it is true an owner can give the value, I think this little lady is unnecessarily being put to too much by way of an actual test.

The Witness: Thank you.

Q. (By Mr. Scampini): After the making of the lease with Joseph Faria, Jr., did you have anyone come to you and ask you for a lease on the property? A. I did.

Q. Who came to you?

A. Well, some fellow, but he didn't tell me the name.

Q. How long after you had made the lease to Mr. Faria did this man come to you?

A. Not very long; a few months after that.

Q. Not very long. Have you been paid by the Government for the value of your mineral rights, Mrs. Faria? The answer, of [43] course, is no.

Mr. Bourquin: Well, that is what we are here for.

Mr. Scampini: That's right. That is all. You may take the witness.

(Testimony of Mary Faria.)

Cross-Examination

By Mr. Bourquin:

Q. Mrs. Faria, you and the Government people settled your differences except for the value of whatever oil or gas was in the property; is that right? A. Yes, sir.

Q. If you don't understand me, will you tell me?

A. Yes. You mean the Government paid me for it?

Q. You did get paid, is that right?

A. Yes.

Q. But it was understood that that would leave you a right to be paid if you could show that they had an oil and gas value in the ground?

A. That's right.

Q. That is correct? A. Yes.

Q. You told us you have been on the property—

A. 25 years before that. 45 years I live there on that place, you know; 45 years that is my home. I live there 45 years on the place.

Q. Do you recall one time when they sank a water well there and you tasted something like oil in the water?

A. Yes. The neighbor never used that.

Q. That was done on the property?

A. Yes, 25 years ago.

Q. Another time when they sunk another well you observed it apparently had some gas and they put a match to it, and lit it?

A. That's right.

Q. It would burn?

A. It burned for hours. [44]

(Testimony of Mary Faria.)

Q. Did you use it? Did you make some use of it?

A. Just—it burned over the place when the fellows got there.

Q. They saw it, and they saw it would burn, but you did not try to use it, put it to any use?

A. Well, it was enough to use it, but we never went to use that.

Q. You did not try to bring it in the house and cook with it? A. No.

Q. By the way, have you ever before had any experience with any property, supposedly oil or gas property, any other property?

A. Just mine there.

Q. Just this one here?

A. Just mine, there.

Q. Did you ever buy or sell any oil or gas interests at all? A. No.

Mr. Bourquin: That is all.

Mr. Scampini: That is all.

EDWARD FARIA,

called as a witness by defendants; sworn.

The Clerk: Will you state your name?

A. Edward Faria, Route 4, Box 493, Concord.

Direct Examination

By Mr. Scampini:

Q. Mr. Faria, you are the son of Mary Faria, who has just been on the stand?

A. Yes, I am.

Q. Your mother sold you, or, rather, gave you

(Testimony of Edward Faria.)

a deed of gift to a piece of land consisting of five acres, and being part of [45] her own property, Parcel 58 of the complaint? A. That's right.

Q. You made a lease to Joseph Faria, Jr., and

A. That's right.

Bud Hildebrand, for oil and gas, did you not?

Q. You made a lease to Joseph Faria, Jr., and Bud Hildebrand for oil and gas, did you not?

A. That's right.

Mr. Scampini: The lease, may it please the court, which I now ask to be deemed part of the record, is the lease dated August 11, 1941, executed by Edward Faria, to Bud Hildebrand and Joseph Faria, Jr., containing and describing portion of the southwest quarter of the northwest quarter of section 21, containing 5 acres more or less, and which is one of the oil and gas leases on Form 86, referred to in that complaint and concerning which I shall offer further evidence later on.

Q. Mr. Faria, at the time that you made this lease had you had any indications on your property of the existence of any oil or gas there?

A. Yes.

Q. When did you first observe those indications?

A. Well, in 1920 when my dad bought that place.

Q. Will you please tell what was done?

A. Well, first thing we did, we built some water wells and there were some spots on the side of the hill where the vegetation does not grow but to a certain height, about three inches, and it dies out, and around the other spots it grows to its normal height. So we got curious. I thought we would dig

(Testimony of Edward Faria.)

a hole there one day with a pick and shovel. I got down to about the height of the [46] handle, and I struck gas pockets in the hole. My dad decided for me not to dig any more on account of I might cause a spark and cause an explosion, so we let that go for about two years and my sister wanted to build a home, so I went ahead and drilled her property. We went off about a hundred feet on the side of those spots and we drilled a well, and we hit water there, but couldn't use it.

Q. Why?

A. On account of the petroleum that was in the water, the smell of it. We started out again and went down to the corner of the field and drilled for water and got plenty of it. So about two years after that we decided to drill in the spot with the well burning outside. The first well we drilled caved in on us, so we moved over about 20 feet, and made another one, and cased it. We struck gas. I replaced the casing to a small pipe, about one-quarter inch pipe, and it would burn a flame up to 18 or 20 inches high. I had it burn in those days until the war broke out and they declared blackout, and I had to put it out; otherwise, it would burn night and day.

Q. During this period of time prior to your giving a lease to Joseph Faria, did you have any representative of any other oil or gas companies approach you for a lease on your property?

A. They did approach my dad, yes.

(Testimony of Edward Faria.)

Q. Do you know who they were?

A. No, I don't.

Q. Did you have any transactions with any of them, yourself? A. No. [47]

Q. After this lease was given to Joseph Faria, did anyone approach you? A. Yes.

Q. Who approached you?

A. It was a geologist from the Shell Oil Company.

Q. They tried to obtain a lease on your property?

A. Not him directly, but indirectly they did.

Q. Did you give them any lease?

A. No; we wouldn't break the lease with Joe Faria.

Q. In this lease did you make reservation also of a one-eighth royalty? A. Yes.

Q. You, like your mother, have made a settlement with the Government as to everything on this property except your royalty interest reserved in the lease? A. That's right.

Q. What, in your opinion, was the value of your royalty interest on the date of the filing of this suit?

A. \$3500.

Q. That is the amount for which you contend?

A. Right.

Mr. Scampini: That is all.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Faria, what is your business, please?

(Testimony of Edward Faria.)

A. I am a truck driver, and a rancher, both combined.

Q. Have you ever had anything to do elsewhere with any oil or gas properties? A. No.

Q. Have you ever worked on an oil or gas exploration or development before?

A. No. I just work for an oil company.

Q. You work for an oil company? A. Yes.

Q. What oil company? A. Shell Oil.

Q. When did you work for Shell?

A. I am still working for Shell. I have been employed by them nineteen years.

Q. What have you done for Shell over the nineteen years? A. Truck driver.

Q. Truck driver? A. Yes.

Q. Have you ever bought or sold any oil or gas rights or minerals, or interests or royalties before?

A. No.

Mr. Bourquin: That is all.

MAE E. ROCHE,

called as a witness on behalf of defendants; sworn.

The Clerk: Will you state your name?

A. Mae E. Roche. I reside at Concord, California.

Direct Examination

By Mr. Scampini:

Q. How do you spell your name?

A. R-o-c-h-e.

(Testimony of Mae E. Roche.)

Q. Mrs. Roche, prior to your marriage to Mr. Roche, were you known as Mae E. Dutra?

A. Right.

Q. You are also a daughter of Mary Faria?

A. Yes.

Q. Did Mary Faria execute a deed of gift to you of approximately 4.96 acres of land of the property owned by her?

A. Right.

Q. That is parcel 57 in the complaint of the plaintiff in this case. How long have you known of that property, Mrs. Roche; ever since you were born?

A. 41 years.

Q. All right. I am sorry. During the period of time that you [49] lived on this property did you observe any indications of oil or gas seepages?

A. Yes.

Q. When did you first observe them, Mrs. Roche?

A. Well, when we used to visit the neighbors. That was about 25 years ago.

Q. What was the name of the neighbor?

A. Mrs. Brazz.

Q. What did you observe on the neighbor's property?

A. Well, they had the place there and I'll never forget, I used to go down, they had a big duck pond, and her children used to tell us they had to abandon the duck pond because there was kerosene in the pond, and the ducks—it would kill them. That was what mother was talking about.

Q. You executed a lease to Joseph Faria, Jr., covering 4.96 acres of land?

A. Yes.

(Testimony of Mae E. Roche.)

Mr. Scampini: I will ask at this time that it be deemed made part of the record, the lease to which I have just referred, under date of August 11, 1941, executed by and between May E. Dutra and Joseph Faria, Jr., and Bud Hildebrand, covering a tract of land bounded north and east by the land of Antone Faria, south by the land of Blume, et al., west by the land of John Faria, being a portion of the northwest quarter of section 21, township 2 North, Range 1 West, containing 4.96 acres of land, reserving a royalty of one-eighth of the oil and gas.

Q. Mrs. Roche, after the execution of this lease, were you approached by any representative of any oil company for a lease [50] on your property?

A. Yes, I was.

Q. Who approached you?

A. Amerada Oil Company, from Rio Vista.

Q. Were they engaged in the drilling wells or gas at Rio Vista at the time?

A. Yes, they were.

Q. Did they ask you for a lease on your property?

A. Yes.

Q. What did you say?

A. No.

Q. Had you already made a lease to Joseph Faria, Jr.?

A. Yes.

Q. Prior to giving that lease to Joseph Faria, Jr., did anyone approach you for a lease on the property?

A. Yes, years ago.

Q. Who approached you years ago?

(Testimony of Mae E. Roche.)

A. I can't remember his name, but he was from Alameda.

Q. Nothing happened as the result of that approach, is that right? A. That is right.

Q. In the course of this litigation you, like your mother and brother, have made a settlement with the Government wherein you have been paid for the value of the land other than the royalty interest reserved by you in this lease? A. Yes.

Q. What, in your opinion, is the value of the royalty interest reserved by you in this lease of July 22, 1944, on the 4.96 acres?

A. \$3500 balance.

Mr. Scampini: That is all.

Cross-Examination

By Mr. Bourquin:

Q. Mrs. Roche, you said that after you had made that lease to Joseph Faria someone came to see you to lease [51] it? A. Yes.

Q. Tell us, if you can, when was that, when do you fix that date?

A. Well, I don't remember exactly, but it was about, I should say, six months after we had leased our place, but I wouldn't remember the dates back.

Q. Well, I think the date counsel indicated in your lease was sometime in 1941.

Mr. Scampini: August 11.

Mr. Bourquin: August 11.

The Witness: I imagine the same year, yes.

(Testimony of Mae E. Roche.)

Mr. Bourquin: It was sometime in the same year?

A. Same year.

Q. That you had that approach?

A. That's right.

Q. You said that you had already made a lease to Joseph Faria? A. Correct.

Q. Have you ever been interested in any property in oil or gas elsewhere? A. No.

Q. Have you ever bought or sold any oil or gas interest or royalties before. A. No.

Mr. Bourquin: That is all.

RALPH BOLLMAN,

called as a witness on behalf of the Defendants; sworn.

The Clerk: Will you state your name?

A. Ralph Bollman.

Mr. Scampini: I might state preliminarily, may it please [52] the court, that the lease that I am going to refer to is escrowed in the Contra Costa County Title Company, and the representative of the title company will be here tomorrow at two o'clock with the escrow papers. There may be something develop in the course of this examination which may throw the lease out, I don't know yet. I will let your Honor rule on it. As I said at the pre-trial conference a week ago, I was wondering whether we could proceed preliminarily based upon a copy of the lease.

(Testimony of Ralph Bollman.)

Mr. Bourquin: I will tell you, as a matter of fact I though we had already crossed the bridge. We are willing to accept your assurance that you have a lease on Mr. Bollman's property.

Mr. Scampini: Very good. That being the case, I have no questions to ask of Mr. Bollman.

The Court: You can go now.

Mr. Bourquin: May I ask Mr. Bollman a question while he is here?

The Court: Yes.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Bollman, have you filed any answer in this case, or any claim for an oil or gas interest and royalty interest? A. No.

Q. You never did, did you? A. No.

Q. And I believe your property that was out there was tried, wasn't it? There was a trial of the real estate, the value [53] of the real estate?

A. In this court, yes.

Q. Before his Honor, Judge Goodman.

A. That's right.

Q. In that case, did you assert any claim of any value touching that property from any possible content of oil and gas? A. No.

Q. You never asserted at all that the property was enhanced in value by the presence of any oil or gas on it? A. No, I did not.

Mr. Bourquin: That is all.

(Testimony of Ralph Bollman.)

Redirect Examination

By Mr. Scampini:

Q. Mr. Bollman, can you state the reason why, the fact you did not assert any value to the royalty reserved by you in this lease?

Mr. Bourquin: Would the reason, your Honor, be—well, I will withdraw any objection.

The Witness: The lease was drawn up and put in escrow with the title company with certain provisions about the drilling which had to be fulfilled before the lease became effective.

Mr. Scampini: Have you finished?

A. Well, do you want me to state in my opinion why they were not fulfilled?

Q. No. Just give your reason why you did not make any claim for any value for gas or oil under the lease.

A. Well, in my attorney's opinion the lease was not in effect at the time.

Q. It was not then based on your belief that there was not any oil or minerals or gas under the property?

A. Well, Mr. Scampini. [54] I am a dairyman, not an oil man.

Q. Is it not true, Mr. Bollman, that you had given an oral extension of the lease to Mr. Joseph Faria, Jr., for valuable consideration paid to you?

A. I gave him an oral extension of the lease for the time to fulfill his agreement, yes.

(Testimony of Ralph Bollman.)

Q. Did you consider the lease to have been in effect or to have lapsed on July 22nd, 1944?

A. If my memory is right, the first lease ran from August 31, 1942, until August 31, 1943; then it was a verbal lease from August 31, 1943, until August 31, 1944.

Mr. Scampini: That is all. No further questions.

Recross-Examination

By Mr. Bourquin:

Q. What did they pay you for that extension, Mr. Bollman?

A. There was no consideration for the lease. Mr. Faria and I had been raised on adjoining ranches and our word with one another had always been good.

Q. Well, did he pay you any premiums or any cash for the lease for further extension?

A. Well, the one——

Q. Can't you answer the question "Yes" or "No"? Did he pay you——

The Court: He wants to know whether he paid you any money for the lease or for an extension.

Q. (By Mr. Bourquin): Did he pay you any money?

A. It was not in the form of money. He offered money, and I knew his financial circumstances and I said, "Well, I'll take stock in [55] the company."

Q. You took stock in the company?

A. Yes.

(Testimony of Ralph Bollman.)

Q. So you took stock in the Cal-Bay Corporation for your lease?

A. No; I think, if I remember the conversation correct, I had made several trips to Martinez and had consulted an attorney——

Q. Let me interrupt you. I don't think this is responsive.

The Court: He just wants to know whether you got some stock in this corporation either for the lease or for the extension.

Q. (By Mr. Bourquin): Did you, Mr. Bollman?

A. Well, the reason I am trying to amplify because I cannot clearly answer "Yes" or "No" to that conscientiously. I think it was—if I remember, I recall it was for all the trouble I had been to in seeing the attorney and having a lease drawn up, and for the trips that I had made.

Q. He gave you some stock for that?

A. Yes.

Q. How much stock did you receive?

A. 100 shares.

Q. 100 shares? A. That's right.

Q. You hold that 100 shares, do you, in Cal-Bay? A. Yes.

Q. Did you ever receive any other consideration—I will withdraw that. Did you ever receive any cash? You said no. A. That's right.

Q. Did you ever receive any other stock?

A. No.

(Testimony of Ralph Bollman.)

Q. Did you ever receive a note from Mr. Faria?

A. No.

Q. Or promise to pay cash? A. No. [56]

Mr. Bourquin: That is all.

Further Redirect Examination

By Mr. Scampini:

Q. The 100 shares, if I understand you correctly, Mr. Bollman, was that given to you at the time you had this oral agreement extending the lease?

Mr. Bourquin: I will object to that. This should not be redirect in view of the fact the witness has testified he got the 100 shares for going to the attorney and having the attorney draw up a lease and making a written lease. On that ground I would say this is not redirect, your Honor.

The Court: No, I think you are wrong about that. All he is asking is the time when he got the stock.

Mr. Scampini: Yes, that's it.

The Court: He wants to know whether he got the stock at or about the time he gave the oral extension of the lease.

Mr. Scampini: That's right.

The Witness: I would say it was at or about the time, yes.

Mr. Scampini: That is all.

Mr. Bourquin: That is all.

Mr. Scampini: No further questions. May we have an adjournment at this time, your Honor?

The Court: Yes.

(The jury was admonished and an adjournment was taken until tomorrow, Thursday, January 23, 1947, at ten o'clock a.m.) [57]

Thursday, January 23, 1947, 10:00 o'clock a.m.

The Clerk: United States vs. Certain Land in Contra Costa County.

The Court: The jurors are present. You may proceed.

Mr. Scampini: At this time, may it please the Court, before calling our next witness I desire to read into the record and for the benefit of the Jury, the stipulations relating to Parcels 57, 58 and 59, properties owned by Mae E. Dutra Roche, Edward Faria and Mary Faria, relative to the settlements made in connection with the payments made by the Government.

The stipulation in the case of United States of America, Plaintiff, vs. 5,430 Acres of Land, No. 23,529-G, final judgment on Parcel 58, an order directing payment of money to the defendant providing and reading as follows:

“It Is Hereby Stipulated And Agreed by and between the United States of America, hereinafter called plaintiff, and Edward, Faria hereinafter described as defendant, as follows:

I.

“The Complaint was filed in this action on July 22, 1944, and defendant acknowledges that he has been served with a copy of the Com-

plaint, Summons and Order for Immediate possession in this action. [58]

II.

“Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of Four Hundred and no/100 Dollars (\$400.00) as full, adequate and just compensation for the taking of said Parcel 58, as described in this action, and for all his right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 18; instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 24; instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 674 of Official Records of Contra Costa County, at page 55; instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488;”

I might state here, outside the stipulation that that is the basic lease that we offered yesterday.

“instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of Contra Costa County, at page 23; instrument dated August 11, 1941, and recorded August 7, 1942, in Volume 672 of Official Records of Contra Costa County, at page 473. [59]

III.

“Defendant warrants that at the time of and immediately prior to the filing of this action by plaintiff, defendant was the owner of said Parcel 58, and defendant is entitled to all the compensation to be paid for the taking thereof, subject to the exceptions contained in preliminary title report No. 414802 issued by Title Insurance and Guaranty Company, San Francisco, California, (Contra Costa No. 90262-58), and said defendant consents that upon the entry of an Order of this Court in the form attached hereto, directing the payment to Contra Costa County Title Company, Martinez, California, of the sum of Four Hundred and no/100 Dollars (\$400.00), without interest, for defendant's account, a Final Judgment may be entered without notice to defendant, in favor of plaintiff and against defendant, condemning said Parcel 58, in fee simple absolute, and any right, title and interest of the defendant in and to said parcel and any property subject to this action, except mineral rights described in Paragraph II hereof: and defendant further consents that the correct description of property included in said Parcel 58 may be set forth in said Final Judgment.

IV.

It Is Further Stipulated and Agreed that the agreed sum of Four Hundred and no/100

Dollars (\$400.00) may be [60] deposited by plaintiff in the Registry of the Court as just compensation for said land, and that the Court may direct the Clerk to pay said sum to Contra Costa County Title Company, as agent for defendant, and Contra Costa County Title Company may, as agent for defendant, without charge or cost to defendant, pay and satisfy all taxes, liens and other charges against said property, except mineral rights provided by instruments particularly described in Paragraph II hereof, and pay the balance to said defendant.

“UNITED STATES OF
AMERICA,

Plaintiff.

“By M. MITCHELL BOURQUIN,

“Special Assistant to the
Attorney General,

“Attorney for Plaintiff.”

And signed by Edward Faria, and attached to said stipulation is an order by the Court which, I assume, has been made and entered in this case, Mr. Bourquin? I have not looked at the record.

Mr. Bourquin: I think so.

Mr. Scampini: I will ask that be made a part of the record, your Honor.

The Court: Very well.

Mr. Scampini: We have a stipulation for final judgment on Parcel 57 and order directing pay-

ment of money to defendant [61] Mae E. Rode, and you, ladies and gentlemen of the Jury, for the benefit of the Jury, I might say that 57 and 58 are these two parcels respectively here, 4.96 in one and 5 acres in the other.

In this stipulation, Paragraph I is the same. Paragraph II reads as follows:

II.

"Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of Fifteen Thousand and no/100 Dollars (\$15,000.00), as full, adequate and just compensation for the taking of said Parcel 57, as described in this action, and for all her right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 643 of Official Records of Contra Costa County, at page 10; instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 21; instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 628 of Official Records of said Contra Costa County, at page 278; instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of said Contra Costa County, at page 488; instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of [62] Official Records of said Contra

Costa County, at page 23; and instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of Official Records of said Contra Costa County, at page 473.”

The rest of the stipulation is along the lines of the first one. I think it will be stipulated that order was made by this Court as to this stipulation here?

Mr. Bourquin: Yes.

Mr. Scampini: Will you stipulate with me, Mr. Bourquin, that the property of Mae E. Roche was improved with some buildings and structures built thereon, or shall I call her back?

Mr. Bourquin: I understand that is true, yes. That is the property that you just read the stipulation in connection with?

Mr. Scampini: Yes. Now, we have a stipulation for final judgment on Parcel 59, which is the property of Mary Faria, taken by the Government and is the portion which is indicated in yellow or, rather, green, on the map below here and magnified up here, on which the well of the Cal-Bay Corporation, Faria No. 1, had been drilled, and it consists of only a portion of her property. On this stipulation the first paragraph is similar to the first paragraph of the first stipulation and the second paragraph reads as follows: [63]

II.

“Plaintiff agrees to pay to defendant and defendant agrees to accept the sum of Twenty-seven Thousand and no/100 Dollars (\$27,000.00) (including salvage to defendant in the amount

of \$220.00), as full, adequate and just compensation for the taking of said Parcel 59, as described in this action, and for all her right, title and interest in and to any property subject to this action; excepting from said taking, mineral rights set forth in instrument dated August 11, 1941, and recorded April 10, 1942, in Volume 637 of Official Records of Contra Costa County, at page 488; instrument dated February 21, 1942, and recorded April 10, 1942, in Volume 655 of Official Records of said Contra Costa County, at page 23; and instrument dated April 28, 1942, and recorded August 7, 1942, in Volume 672 of Official Records of said Contra Costa County, at page 473."

And the last of the stipulations is along the same lines as the first stipulation, and this stipulation has been executed by the parties and so ordered by the Court. Is that correct?

Mr. Bourquin: Yes.

Mr. Scampini: Will you also stipulate with me, Mr. Bourquin, that the property involved in Parcel 59 taken by the Government, pursuant to that stipulation, aggregates in the sum total of 218.79 acres of land, the lease to Cal-Bay [64] Corporation, and 63.91 acres of land on the lease to Joseph Faria?

Mr. Bourquin: I understand that is right. [64-a]

JOSEPH FARIA, JR.

called as a witness on behalf of the defendants; and being first duly sworn, testified as follows:

(Testimony of Joseph Faria, Jr.)

The Clerk: Will you state your name to the Court and Jury?

A. My name is Joseph Faria.

Direct Examination

By Mr. Scampini:

Q. Mr. Faria, what is your usual occupation or business?

A. I am a farmer, own a farm, and am a farm contractor, and I own some oil wells in Maricopa and the Fruitvale district near Bakersfield, and also at Pyramid Hills.

Q. Where do you reside?

A. I reside in Brentwood, Contra Costa County.

Q. Is Geraldine Faria your mother?

A. Yes.

Q. Is Maria Faria your aunt? A. Yes.

Q. Were you raised on the property owned by Geraldine Faria adjoining the property of Maria Faria? A. Yes.

Q. Which is indicated on the map to the right of you as Parcel 64 in this condemnation suit?

A. Yes.

Q. And you were born there, were you not?

A. Yes.

Q. During the period of time that you lived on the property of Geraldine Faria, your mother, did you observe any developments on that property or on adjoining property in that vicinity relative to oil or gas?

(Testimony of Joseph Faria, Jr.)

A. Yes, sir, near Oil Canyon or Oil Creek there were oil wells drilled there by some oil company, and then after that, years after that, there was a well drilled in the Tracy Field, the discovery of a gas well; and then after that the Rio Vista gas field was discovered, and the McDonald Island gas field, and the Bradford Island gas field, and several other discoveries have been made since then on Honker Bay and Suisun area.

Q. How far from the home of your mother was Oil Creek?

A. About ten miles, ten to fifteen miles.

Q. Is that the name by which it is commonly called, Oil Creek?

A. Well, it is Oil Creek, and some call it Oil Canyon.

Q. How old were you when these wells were drilled in Oil Creek?

A. I was very young. I would say about eight or nine years old.

Q. Did you notice or did you observe any developments on your aunt's property or any seepages on your aunt's property of oil and gas covering the period of time that you lived with your mother?

A. The people who lived there, known as Bras, on the property that my aunt purchased from them, they abandoned a water well for the reason it was contaminated with oil, and some years after that my uncle and cousin drilled a well there and they discovered gas on this property.

(Testimony of Joseph Faria, Jr.)

Q. Was the well that was drilled a water well?

A. They did drill for water and the water was so bad they could not use it and they abandoned that well.

Q. Were you living on your mother's property at that time? [66]

A. No, I was not. I was living in Brentwood.

Q. Did you see the well that was drilled by your cousin?

A. No, I did not, not the water well.

Q. What well did you see?

A. I saw the gas well.

Q. Did you do anything in connection with that gas well that you recall? A. No, sir.

Q. Did you observe whether or not it was producing gas? A. Yes.

Q. How did you make that observation?

A. They showed it to me. They had this casing down in the well, and *they it* capped on top with with a very small outlet, if I remember right, a quarter-inch outlet; they struck a match, lit it, and it burned a flame, I would say, about that length (indicating).

Q. How many inches would you say that was?

A. Eighteen to twenty inches.

Q. How long did that burn, to your knowledge?

A. It burned steadily all the time it was there.

Q. I mean, how many years or how many months?

(Testimony of Joseph Faria, Jr.)

A. The well would burn steadily day and night and had been there for twenty years or better.

Q. Was it there when you took a lease on the property from your aunt, Mary Faria?

A. Yes, sir.

Q. I will show you here what appears to be a colored photograph, and I will ask you if you know what that is?

A. Yes, that is the gas well. [67]

Q. Did you have that picture taken?

A. Yes.

Mr. Scampini: May I show it to the Jury, your Honor?

The Court: You will have to offer it first.

Mr. Scampini: I offer this in evidence as Plaintiff's Exhibit 1.

Mr. Bourquin: No objection.

(The photograph in question was thereupon received in evidence and marked Defendants' Exhibit 1.)

[Defendants' Exhibit 1 appears on page 1215.]

The Court: Would you have the witness state when that picture was taken?

Mr. Scampini: Yes.

Q. Mr. Faria, when was the picture of this well taken?

A. The picture of this well was taken—I can't

(Testimony of Joseph Faria, Jr.)

recall the date, but it was, I think, in 1945, taken by Mr. Phelps of Pittsburg.

Q. Was it taken pursuant to a stipulation entered into with the Navy?

A. Yes, that is right.

Q. Permitting the taking of the picture?

A. Yes.

The Court: That was after the Navy was in possession.

Mr. Scampini: Yes, the Navy was already in possession.

Q. Have you had any experience in the production of petroleum or natural gas?

A. No, only from the wells that I owned.

Q. Where do you own wells?

A. At Maricopa.

Q. What do you own there?

A. I own a half-interest in [68] 40 acres of four producing oil wells.

Q. Do you own any other properties of oil or gas in there?

A. Yes, I own an interest in four other wells in the Fruitvale Field near Bakersfield.

Q. When was it you first became interested in the production of oil and gas?

A. In 1944—you mean at the very beginning?

Q. The first time.

A. Ever since I was about 20 years old.

Q. What did you do in that respect?

(Testimony of Joseph Faria, Jr.)

A. Well, I observed what was going on throughout the country, and I was very much interested, and I would watch developments in other parts of the country whenever I went through.

Q. When was it that you first made any investment in the oil business?

A. In Santa Cruz in 1939.

Q. Under what circumstances?

A. A group of us got together and we decided to spend a little money and drill a well at Santa Cruz on Tom Major's ranch, seven miles north of Santa Cruz.

Q. What happened to that venture?

A. We drilled the well. It was a shallow well, and we decided it would not pay for us to try to produce the well, and we abandoned it.

Q. Do you know Mr. Bud Hildebrand?

A. I met Mr. Hildebrand sometime after we abandoned this well at the Tom Major's property. I was visiting at Mr. Major's home and I met him there. He was looking for some information in regard to this [69] well.

Q. What, if anything, took place between you and Mr. Hildebrand at that time?

A. I gave him whatever information I had—

Mr. Bourquin: I will object to this, your Honor.

Mr. Scampini: It is only preliminary to the forming of the partnership between Mr. Faria and Mr. Hildebrand.

The Court: What is the materiality of all these

(Testimony of Joseph Faria, Jr.)

matters, as to how these men got together, affecting the value of this property?

Mr. Scampini: I suppose from that point of view it would not be material; it is preliminary.

The Court: I think you could skip down and get to what you have in mind.

Mr. Scampini: Mr. Hildebrand was one of the lessees with Mr. Maria.

The Court: There isn't any dispute that the witness and Mr. Hildebrand took these leases, is there?

Mr. Bourquin: None, your Honor.

Mr. Scampini: After meeting Mr. Hildebrand, what if anything, did you do with Mr. Hildebrand, looking toward acquisition of oil and gas leases?

The Court: Mr. Scampini: I thought we agreed on that. It has been agreed that the leases were obtained by the witness and Mr. Hildebrand. The only question is, what is this property [70] worth? What, if anything, are the oil rights worth? I think you could get right down to that. There is no question of title involved here, is there?

Mr. Bourquin: None, your Honor.

The Court: The only question for the jury to decide is how much is this worth?

Q. (By Mr. Scampini) After meeting Mr. Hildebrand, did you and Mr. Hildebrand obtain a lease from your aunt, Mary Faria, on the property owned by her, consisting of 441 acres of land?

A. Yes.

Q. And the lease was for a period of 20 years?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. From and after the date hereof, and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced in quantities deemed paying by lessee at a royalty of $\frac{1}{8}$ part of said oil. Is that correct?

A. Yes.

Q. The lease from Mary Faria is dated August 11, 1941, and was taken in your name and that of Mr. Bud Hildebrand?

A. Yes.

Q. And thereafter recorded in Book 637 of Official Records, page 488, of the records of Contra Costa County, on the date of April 10, 1942, and thereafter Mr. Hildebrand assigned his interest in this lease to you, did he not?

A. Yes.

Q. And the assignment is recorded April 10, 1942, in Volume 655 of Official Records, at page 23. Mr. Hildebrand subsequently [71] died, isn't that right?

A. Yes.

Mr. Scampini: I will ask that I be allowed to offer photostatic copy of the lease and the assignment, and have it marked Defendants' Exhibit next in order.

Mr. Bourquin: If you think the lease is necessary in the record—I thought that was made plain—there is no question but what this is the lease of Mary Faria to which the Cal Bay Corporation succeeded. I thought it was stipulated that that lease was in effect at the time of the taking. Of course if the terms have some bearing on the value—

Mr. Scampini: That is the point. It might have

(Testimony of Joseph Faria, Jr.)

some bearing on our case before the jury and on appeal. I ask that it be marked as our exhibit next in order.

The Court: It may be admitted.

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 2.)

[Defendants' Exhibit 2 appears on pages 1217 to 1238.]

Q. (By Mr. Scampini) Did you obtain a lease from Mae E. Dutra? A. Yes.

Q. And that, of course, is the lease dated August 11, 1941, covering 4.96 acres, for a term of 20 years, and so long thereafter as oil and gas is produced, at a royalty of $1/8$? A. Yes.

Q. That lease was also taken in the name of yourself and Mr. Hildebrand, and thereafter Mr. Hildebrand assigned to you, is that correct?

A. Yes.

Mr. Scampini: I offer that lease and ask that it be marked [72] Defendants' Exhibit next in order, your Honor.

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 3.)

[Defendants' Exhibit No. 3 is an oil and gas lease, and assignment thereof, in substantially the same form and to the same effect as Defendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defend-

(Testimony of Joseph Faria, Jr.)

ants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Q. (By Mr. Scampini) You obtained a lease from Edward Faria on the date of August 11, 1941, covering five acres, more or less, adjoining the property of your aunt, and also for a term of 20 years from the date thereof, and so long as oil and gas is produced thereon——

A. Yes.

Q. At a royalty of $\frac{1}{8}$?

A. Yes.

Q. That was taken in the name of yourself and Bud Hildebrand, and thereafter Bud Hildebrand assigned his interest to you?

A. Yes.

Mr. Scampini: I will ask that that be marked Defendants' Exhibit next in order, your Honor.

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 4.)

[Defendants' Exhibit No. 4 is an oil and gas lease, and assignment thereof, in substantially the same form and to the same effect as Defendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defendants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Q. (By Mr. Scampini) You obtained a lease, did you not, from Manuel Alvernaz and Mary J. Alvernaz, his wife, covering the property which is

(Testimony of Joseph Faria, Jr.)

shown on the map here of 310 acres, more or less, lying above the property of your mother, Geraldine Faria, is that right? A. Yes.

Q. That was for a term of 20 years, and so long thereafter as oil and gas is produced therefrom, and the date of this lease is March 3, 1942, and that was taken in the name of yourself and Bud Hildebrand, and was assigned by Mr. Hildebrand to you thereafter? A. Yes. [73]

Mr. Scampini: May that be marked our exhibit next in order, your Honor?

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 5.)

[Defendants' Exhibit No. 5 is an oil and gas lease, and assignment thereof, in substantially the same form and to the same effect as Defendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defendants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Mr. Campini: You also obtained a lease from your mother, Geraldine Faria, covering the property owned by her and lying adjoining the property of Geraldine Faria, as shown on the map on the bulle-

Q. That contains 221 acres more or less, and the

(Testimony of Joseph Faria, Jr.)

date of that lease is December 23, 1941, for a term of 20 years, and so long thereafter as oil and gas is produced therefrom, and taken in the name of yourself and Bud Hildebrand and by Bud Hildebrand assigned over to you.

I will ask that that be marked our exhibit next in order.

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 6.)

[Defendants' Exhibit No. 6 is an oil and gas lease, and assignment thereof, in substantially the same form and to the same effect as Defendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defendants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Q. (By Mr. Scampini) In addition to those leases, Mr. Faria, did you obtain a lease on the date of August 11, 1941, from Joe Chavez and Dorothy Chavez, embracing 286 acres on one parcel and 128 acres more or less on another parcel, which is shown on the map down here as parcel 71?

A. That is right.

Q. That lease was taken on August 11, 1941, for a term of 20 years, at a royalty of $1\frac{1}{8}\%$, and I might say at this point in all these leases the royalty was the same; is that right? [74]

A. That is right.

(Testimony of Joseph Faria, Jr.)

Q. And taken in the name of you and Bud Hildebrand, and by Bud Hildebrand assigned over to you?

A. That is right.

Mr. Scampini: I will ask that that be marked Exhibit next in order.

(The lease in question was thereupon received in evidence and marked Defendants' Exhibit 7.)

[Defendants' Exhibit No. 7 is an oil and gas lease, and assignment thereof, in substantially the same form and to the same effect as Defendants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defendants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Q. (By Mr. Scampini) In addition to that, did you negotiate and obtain from Ralph D. Bollman on date of August 31, 1942, a lease embracing 771 acres, more or less, owned by Mr. Bollman and shown on the map as Parcel 3-A?

A. Yes, that is right.

Q. And that lease was deposited in escrow with the Contra Costa County Title Company, is that right?

A. Yes.

Q. To be delivered to you upon the performance of certain conditions and commitments. Now, on August 31, 1942, that lease expired as to the commitment, and did you have any negotiations with Mr. Bollman looking toward its extension?

(Testimony of Joseph Faria, Jr.)

A. Yes, we had an oral agreement.

Q. What was that oral agreement?

A. He agreed to let me have the extension, and it was agreed with him that we could carry on just as I was doing, because I was drilling this well here—we were drilling the Cal Bay well at that time, and depending on what would happen on this Cal Bay well, if it came in as a producer, then I could go on his property after that.

Q. Did you pay him any consideration for that extension? [75]

A. I gave him \$100 for the expense he had.

Q. Did you pay him \$100 in cash, or other form of property?

A. He took 100 shares of Cal Bay stock.

Q. At what par value? A. A dollar.

Q. And is that lease still in escrow with the Contra Costa County Title? A. Yes.

Q. Awaiting developments on the property, is that right? A. Yes.

Mr. Scampini: I have a copy of that lease here that I have delivered to counsel. The original is on file. I ask that I be permitted to put the copy in evidence.

Mr. Bourquin: Very well.

Mr. Scampini: Thank you.

[Defendants' Exhibit No. 8 is an oil and gas tin board as Parcel 64, is that right? A. Yes.

lease, and assignment thereof, in substantially the same form and to the same effect as De-

(Testimony of Joseph Faria, Jr.)

endants' Exhibit No. 2, which is set out at pages 1217 to 1238, and differing from Defendants' Exhibit No. 2, only as to names of the lessors and the descriptions of the several parcels of land.]

Q. Did you have any other leases on the structure there?

A. Yes, on that Louis Machado property on the extreme south end of the structure.

Q. What happened to that lease?

A. I still have it.

Q. How many acres are embraced in that lease?

A. 480.

Q. That property is not subject to any of this proceeding? A. No.

Q. Under what circumstances and for what reasons did you accumulate these leases?

Mr. Bourquin: Is this material, your Honor?

The Court: No, I don't think so. I think it can be safely assumed that the property was accumulated to see whether they could get gas or oil.

Mr. Scampini: I wanted to prove it for the purpose of the record that the leases were accumulated as the result of certain investigations made relative to the geology and that—

The Court: Are you offering this witness as a geologist?

Mr. Scampini: I can state for the purpose of

(Testimony of Joseph Faria, Jr.)

the record it was in connection with getting work done and, of course, the taking of these leases.

The Court: I don't see the materiality of all that myself. What difference did it make what investigation he made? The question is, what are the facts with respect to this property at the time it was taken by the Government? I assume you have witnesses, I believe it was stated in the pre-trial conference, who will testify as to their examination and investigation as to the nature of this property at the time of the taking. That is the only question.

Mr. Scampini: The thought I had in mind was that I desire to show for the purpose of the record that these pieces were taken by Mr. Hildebrand and Mr. Faria and not based on any sudden decision, but after considerable exploration and based upon the geology information obtained by them as to the possibilities of the territory.

The Court: I don't see the materiality of it.

Mr. Scampini: I will rest—

The Court: Anything that is material to establish the value of the property, of course, you should have full opportunity to present to the Jury, but I think that probably the Government lawyers would stipulate with you that the witness made some investigation and was convinced that he had good reason to take these leases. What his reasons may have been in relation to the value of the prop-

(Testimony of Joseph Faria, Jr.)

erty at the time it was taken by the Government—unless you are offering them as a background to give his opinion as to the value at the time of taking——

Mr. Scampini: That is exactly what I had in mind.

The Court: Then you run into this question, you have to qualify your witness as an expert and while it has been the rule under the state law that you can't ask—you are going [78] to ask him as to what sales were made?

Mr. Scampini: No.

The Court: Just as to what his knowledge is?

Mr. Scampini: I think he can testify as to his opinion as to the value of these leases.

The Court: As the owner of a leasehold interest, would you think that that would be right?

Mr. Bourquin: I would think, your Honor, they might run in the category of the owners and they are entitled to express an opinion, the point of it being for the Court and Jury to measure it by what they might be expected to know. May I interject here, it seems to me going into this is like asking Mr. Faria or someone else or hoping to prove there is some mineral over in that property out there in the Mojave Desert, because a man went out and took a lease on it. If he wants to ask Mr. Faria any questions that would bear on the value there or potential——

(Testimony of Joseph Faria, Jr.)

The Court: I think he can ask him his opinion as the owner of an interest in this property as to what he considered the mineral rights worth at the time of the taking by the Government. Then, of course, you may develop his qualifications to give an opinion. As to what investigation he made——

Mr. Scampini: Well, do I understand, your Honor, to infer by that I am not going to be permitted to offer into the record what was done on this property by way of [70] drilling? This is two years before the Navy came into the picture, after they have been working on this property.

The Court: Well, I am not pretending to shut out any material evidence as to physical conditions, of course not. However, I do not think a long examination as to what the witness' reasons were for taking the leases is necessary; that is a different subject matter from what you are now talking about.

Mr. Scampini: Let's see if we can approach it in a different manner.

Q. Mr. Faria, after you and Mr. Hildebrand got these leases, what did you do in respect to developing the property?

A. Mr Hildebrand and I met Harold Henry and Mr. Bush and we were talking about what we should do——

The Court. That is what I was afraid of. Just have him testify what physically was done.

Mr. Scampini: Let me ask this: Did you retain

(Testimony of Joseph Faria, Jr.)

the services of a geologist for the purpose of giving you a report on the property? A. Yes.

Q. Who did you retain?

A. Byron Norris.

Q. From what city?

A. From Los Angeles.

Q. Did Mr. Norris make any study of the property for you? A. Yes.

Q. Did he deliver to you a report?

A. Yes.

Q. Under what date is that report?

A. March 20, 1942. [80]

Q. No; it is April 20, isn't it?

A. April 20, I think.

Q. April 20, 1942?

A. Yes, April 20; pardon me.

Q. When you received that report, what did you do in connection with developing the properties?

A. We had—I had—we formed a corporation.

Q. What is the name of the corporation?

A. Cal Bay Corporation.

Q. Who formed the corporation?

A. W. W. Morgan was on the board and Henry J. Gwyne, John Knox, Vice-President, Joseph Faria, President, Esther L. Faria, and Mr. Webster was our attorney.

Q. Upon forming this corporation know as Cal Bay Corporation, did you assign some of these leases to the Cal Bay Corporation? A. Yes.

Q. Cal Bay Corporation was organized under

(Testimony of Joseph Faria, Jr.)

the laws of the State of California on April 17, 1912; is that correct? A. Right.

Q. To Cal Bay Corporation you assigned, did you not, the leases taken by you and Mr. Hildebrand covering the property of Mae E. Dutra, Parcel 57, consisting of 4.96 acres, and Parcel 58 owned by Edward Faria? A. Yes.

Q. You assigned all of the leases that you obtained from Mary Faria, consisting of 441 acres, more or less, other than 73½ acres that you retained for yourself, did you not?

A. Yes, that's right. [81]

Q. And did you assign to Cal Bay Corporation the lease that you obtained from Manuel V. Alvernaz, consisting of 310 acres? A. Yes.

Q. Altogether you assigned to Cal Bay Corporation, did you not, approximately 687 acres?

A. Yes.

Mr. Bourquin: Are these the same assignments that you have just testified to this morning when you put the leases in evidence?

Mr. Scampini: Yes, and they are in evidence as part of the record and they have been recorded.

Mr. Bourquin: We are going over the same ground, your Honor. I am just preparing to make objection.

Mr. Scampini: How am I going to show value unless I prove the number of acres assigned to them and the number of acres retained by others?

Mr. Bourquin: I thought that was in the record.

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: The Jury has not heard it unless I read those lengthy documents.

The Court: I thought it was understood that there was going to be just a unit valuation requested of the Jury and you were going to make your own allocations. Was I in error about that?

Mr. Scampini: Well, there are 687 acres which went to Cal Bay Corporation and 1441 acres of these leases retained by Joseph Faria, Jr., and of the 687 acres given to Cal Bay [82] Corporation only a certain portion has been taken by the Government and likewise of the case of Mr. Faria, and unless I put it in the record and make available to the Jury the divisions of these properties, I am afraid the Jury will be so confused when the experts' testimony is given on their methods of evaluation.

The Court: Proceed.

Q. (By Mr. Scampini): Altogether the leases accumulated covered approximately 2,100 acres?

A. Yes.

Q. You retained the rest of the acreage for yourself?

A. Yes.

Q. When Cal Bay Corporation had been organized and these leases had been assigned to the corporation, what did you do next?

A. We obtained a permit.

Q. From whom?

A. From the Division of Corporations.

Q. For the issuance of stock? A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. How many shares were issued by Cal Bay Corporation? A. 62,500.

Q. To whom were those issued, those shares?

A. 62,500 shares issued to me and 62,500 to be sold.

Q. 62,500 shares were issued to you in consideration of the assignment by you of these leases, is that correct? A. Yes.

Q. And 62,500 shares were sold at what price?

A. One dollar a share.

Q. Did you then begin the drilling of a well on the property? [83] A. Yes.

Q. When did you begin drilling?

A. On July 14, 1943.

Q. Who was the superintendent or supervisor, or in charge?

A. Harold J. Henry was the drilling superintendent, and Byron Norris the engineer.

Q. The drilling progressed? A. Yes.

Q. Thereafter? A. Yes.

Q. Did you take cores at regular intervals?

A. A great many cores.

Q. Who would examine the cores of the drilling?

A. A paleontologist and Mr. Norris.

Q. Who was the paleontologist?

A. Glenn Ferguson.

Q. Where?

A. Union Oil Company of Bakersfield.

Q. Who made the location for you upon which you drilled the well? A. Byron Norris.

(Testimony of Joseph Faria, Jr.)

Q. Did he give you report in that respect?

A. Yes.

Q. You had nothing to do with selecting the location yourself, did you? A. No.

Q. Where did Byron Norris locate the drilling of this well, on what property?

A. The Mary Faria property.

Q. On Parcel 59? A. Yes, 59—58.

Q. That is 58 there? A. That's right.

Q. Approximately how many feet away from where this gas seepage well was did Mr. Norris locate the drilling of the well?

A. Approximately 600 feet. [84]

Q. What name was given to the well that was being drilled? A. Faria No. 1.

Q. Faria No. 1. What type of derrick was used in connection with drilling the well?

A. 126-foot steel derrick.

Q. I show you here a photograph of a derrick and well; will you please tell whether or not you recognize it? A. Yes, that is it.

Q. By whom was that picture taken?

A. This picture was taken by McBride.

Q. Was McBride one of the workers there?

A. No; he was a man from Antioch who took it.

Q. Was it taken upon your request?

A. Yes.

Q. Do you recognize that? A. Yes.

Q. Did you see the well in course of drilling?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: I ask this be marked as Defendants' Exhibit next in order.

The Court: It may be marked.

(The photograph in question was thereupon marked Defendants' Exhibit No. 9.)

Mr. Scampini: At this time, may it please the Court, I would like to have for the purpose of identification marked the maps on the bulletin boards here, which will then be present and identified by the experts who will tie them up together.

Mr. Bourquin: No objection, for identification. Your [85] Honor, we will observe the question of materiality until these maps are offered.

The Court: Which ones do you wish marked for identification?

Mr. Scampini: I would suggest the map which lies underneath the large map here, there are two large maps, the map entitled, "Official Map of Contra Costa County, California." I ask that be marked for identification Exhibit No. 10.)

The Court: No. 10 for Identification.

(The map in question was thereupon marked Defendants' Exhibit 10 for Identification.)

Mr. Bourquin: May I ask, do you desire to put that map in evidence?

Mr. Scampini: Yes.

Mr. Bourquin: We will have no objection to that map just mentioned.

The Court: All right, that is No. 10 and will be in evidence.

(Testimony of Joseph Faria, Jr.)

(Defendants' Exhibit 10 for Identification was thereupon received in evidence.)

Mr. Scampini: I ask this "Bransford's Map of California Oil Fields" be offered in evidence as our exhibit next in order.

Mr. Bourquin: We will object to that map remote, irrelevant, immaterial, a map taking in the whole of California, as [86] to its relevancy or materiality to prove the value in this locality.

Mr. Hettman: He is only offering it for identification.

Mr. Bourquin: He offered it in evidence.

Mr. Scampini: I offered it in evidence.

The Court: Mark it for identification.

(The map in question was thereupon marked Defendants' Exhibit 11 for Identification.)

Mr. Scampini: I will ask that the next exhibit for identification be the map showing "Potential Oil and Gas Lands as Taken by U. S. Navy re Expansion of Naval Ammunition, Port Chicago, made to accompany Report dated January 15, 1945, John H. Wents, Jr."

The Court: That will be No. 12 for Identification.

(The map in question was thereupon marked Defendants' Exhibit 12 for Identification.)

Mr. Scampini: I ask the next map which I offer for the purpose of identification and which is map

(Testimony of Joseph Faria, Jr.)
entitled, "U. S. Department of Interior, Geological
Survey, California Antioch Quadrangle."

Mr. Bourquin: For identification?

Mr. Scampini: For identification.

The Court: That will be 13 for Identification.

(Thereupon the map in question was marked
Defendants' Exhibit 13 for Identification.)

Mr. Scampini: I will ask if Government counsel
will stipulate with me that the well to which Mr.
Faria has referred as Faria No. 1 was located on
the map referred to here is the map entitled or
marked No. 12 for Identification.

Mr. Bourquin: That is the little map made by
Mr. Wents?

Mr. Scampini: Made by Mr. Wents.

Mr. Bourquin: The location of this well is as
purportedly shown on that map?

Mr. Scampini: That's right.

Mr. Bourquin: No question about that.

Mr. Scampini: Does your Honor wish to take
the recess at this time?

The Court: Yes. Please bear in mind the ad-
monition the Court has heretofore given you, ladies
and gentlemen.

(Recess.) [88]

The Court: The jurors are all present. You may
proceed.

Q. (By Mr. Scampini): Mr. Faria, I show you

(Testimony of Joseph Faria, Jr.)

here a photograph and I ask you to look at it and tell me, if you can identify it and state what it is.

A. Yes, that is a picture of the drilling equipment on this property, the Mary Faria location.

Q. When was that picture taken, if you know?

A. That was taken in October, 1944.

Q. 1944, or 1943? A. 1944.

Q. By whom?

A. Taken by Richard Stevenson.

Q. Under your supervision? A. Yes.

Q. At your direction? A. Yes.

Mr. Scampini: I offer this in evidence as our exhibit next in order, your Honor.

(The photograph in question was thereupon received in evidence and marked Defendants' Exhibit 14.)

[Defendants' Exhibit 14 appears on page 1240.]

Q. (By Mr. Scampini): I show you here a photograph and ask you if you can identify or state what it is. A. That is the mud pit.

Q. Mud pit of what?

A. The mud that is used for circulating in the well.

Q. Of the Faria well? A. Yes.

Q. When was that photograph taken?

A. This was taken in October.

Q. What year? A. 1944.

Q. By whom? A. By McBride. [89]

Q. Under your direction and at your request?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: I will offer that into evidence as our exhibit next in order.

(The photograph in question was thereupon received in evidence and marked Defendants' Exhibit 15.)

[Defendants' Exhibit 14 appears on page 1241.]

Q. (By Mr. Scampini): I show you here a photograph and ask you to look at it and state what that is.

A. This is sacks filled with baroid and mud pumps on this location. This picture was taken October, 1944, by Mr. McBride.

(The photograph in question was thereupon received in evidence and marked Defendants' Exhibit 16.)

[Defendants' Exhibit 14 appears on page 1242.]

Q. (By Mr. Scampini): In the course of drilling, Mr. Faria, what, if anything, did you observe coming from the well?

A. After we drilled down a certain depth we began to notice some gas showings.

Q. At what depth did you first notice gas showings? A. Over 3000 feet.

Q. Where would you notice the gas showings?

A. We would notice it on the ditch, that is, from the mud that was coming up from the well and the return circulation. It would break through before

(Testimony of Joseph Faria, Jr.)

it entered this mud pit. You would notice it in the mud pit also.

Q. Who was your drilling superintendent at that time? A. Harold Henry.

Q. Was a log made of the work done or kept of the work done [90] on the well? A. Yes, sir.

Q. Was that kept every day? A. Yes.

Q. Who kept the log of the well for you?

A. The drillers, the drilling superintendent.

Q. Was the log of the well kept under your supervision? A. Yes.

Q. Have you got with you the log of the well?

A. Yes, I have.

Q. Is that the volume in your possession?

A. Yes.

Q. The log of the well? A. Yes.

Q. What does it represent?

A. It represents from the day we started rigging up until we abandoned the well.

Q. Will you please look at your log and state at what depth you first discovered or observed showings of any gas coming.

A. A good oil and gas showing on ditch dated 8/23/43, at the depth from 3393-3405.

Q. What, if anything, was done after that showing?

A. There was a Schlumberger taken.

Q. Who made the Schlumberger test?

A. The Schlumberger people.

Q. What is a Schlumberger, if you know?

A. I wouldn't know how to explain it

Q. If you do not know, say so.

(Testimony of Joseph Faria, Jr.)

A. It is an electric log of the well.

Q. After this Schlumberger was made, what, if anything else, was done in connection with the well.

A. Well, there were [91] cores taken.

Q. Was Mr. Norris in attendance at that time?

A. Yes.

Q. Was the Schlumberger test made under the supervision of Mr. Norris? A. Yes.

Q. Did you speak of a temperature survey?

A. A temperature survey was made quite some time afterwards, after this electric log was taken.

Q. Who made the temperature survey of the well? A. The Schlumberger people.

Q. Was that made under the supervision of Mr. Norris? A. Yes.

Q. Then what else was done, or what next was done?

A. After this was done we went on head drilling, drilling a head.

A. We went drilling ahead in very hard shale until we reached the depth of 4268 feet.

Q. Then what happened?

A. Then we had a large showing of gas.

Q. Does your log indicate the date and the approximate depth of that second showing of gas?

A. Yes.

Q. Will you please look at your log?

A. This was on the date of October—on 9/25.

Q. Of what month?

A. On the 9th and 25th.

Q. Of what month?

A. That would be—

(Testimony of Joseph Faria, Jr.)

Q. October 25, do you mean?

A. That would be September 25.

Q. September 25, 1943? A. Yes.

Q. At what depth? A. This was at 4277.

Q. What does your log indicate or reflect as having occurred on that date?

Mr. Bourquin: The log is the best evidence of that. We have not yet raised the objection to the man stating what is in the log. It has not been shown, however, that he made these observations himself, but preliminarily I would say that asking this witness, who indicates that he is not a skilled witness in this field, what the log reflects is calling for an opinion from a man whose qualifications have not been established. Let him read the entry.

The Court: Have you got the man who made the log?

Mr. Scampini: It was kept under his supervision, your Honor. The head drillers would sign the log.

The Court: I thought he said he had a man in charge of drilling by the name of——

The Witness: Harold Henry.

The Court: Did he make the log? Where is Henry? Is he available?

Mr. Scampini: I do not think so, your Honor. We have Mr. May, who subsequently followed Mr. Henry, and some of the entries have been made by him, but Mr. Henry we have not been able to locate.

The Court: He said the log was made under the direction of this witness.

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: Might I ask the defendant a question on [93] that, your Honor?

The Court: Yes.

Q. (By Mr. Bourquin): Mr. Faria, how much time did you spend at the well, say, in the period of 1943, when the well was sunk?

A. Well, I would be there—I tried to get there most of the time. I wouldn't be there every day, but I would be around there part of the time through the day.

Q. Some days you would not be there at all?

A. Some days I wouldn't be there, that is right.

Q. The log is designed to be something that is kept as a matter of daily entries?

A. Yes, each shift.

Q. Do you understand the readings of that log, what they imply?

A. Well, yes, I understand the readings of the log.

Mr. Bourquin: That poses a problem, your Honor, although I might say this: We want the material that is in that log, but we do not want it interpreted by a witness who does not understand it. As a matter of fact, we do not want it interpreted by anybody.

The Court: I think the objection is good, counsel. I think it is the duty of the court not to allow a layman to present matters of this kind. I do not wish to be repetitious in the matter, but several times I have been advised by counsel that you are

(Testimony of Joseph Faria, Jr.)

going to have experts here who are familiar with the drilling of wells, whose business it is to do it, who no doubt can take these documents and give you all the information [94] that you need, and it is an unnecessary duplication to have a man who is not qualified as an expert to testify concerning these matters.

Mr. Bourquin: We have no objection to his reading, if he wants to read the entry, but we object to this witness' interpretation.

Mr. Scampini: I made no effort to interpret the log, your Honor. I might have used the wrong word. I said, "What does it reflect?" Maybe I should have said, "What does it say?" I offer the log for identification.

The Court: Why don't you have the log marked, and then have one of your other witnesses who is qualified to explain the log?

Mr. Scampini: I ask that it be marked as our next exhibit in order for identification.

Mr. Bourquin: We join in that offer of the log for identification.

(The log of the well was thereupon marked Defendants' Exhibit 17 for Identification.)

Q. (By Mr. Scampini): Do you recall the occasion when this second showing of gas became evident in the well? A. Yes.

Q. Did you see it, yourself? A. Yes.

Q. Were you at the well at the time?

(Testimony of Joseph Faria, Jr.)

A. I was there after the search, after they made this discovery.

Q. What did you see?

A. I saw the surging of the well. The [95] gas would kick the mud from the rotary table.

Q. What else did you observe?

A. I observed the gas coming through the mud in that ditch.

Q. How did you know it was gas?

A. Because we could light it.

Q. Because you could light it? A. Yes.

Q. When that became feasible or evident to you what was done in respect to further operations?

A. They took a Schlumberger.

Q. Is that a second Schlumberger?

A. Yes. But just before they took the Schlumberger they had to build this mud up, they had to call in a baroid man.

Q. Just a moment. You say they had to call in a baroid man. Did you hire a baroid man?

A. Yes.

Q. What is a baroid man?

A. A baroid man is a mud expert that builds up the weight of the mud.

Q. Where did you bring him from?

A. He came in from Bakersfield.

Q. What was his name? A. Ed Mohor.

Q. How is that spelled? A. M-o-h-o-r.

Q. Do you know what Mr. Mohor did with respect to building up the weight of the mud, of your own personal knowledge?

(Testimony of Joseph Faria, Jr.)

A. No, I do not. I do not know what he did.

Q. What, if anything, was done after Mr. Mohor arrived, that you know of?

A. The mud was built up from 80 pounds to 96 pounds to the cubic foot and then a Schlumberger was taken.

Q. Were you there when a Schlumberger test was made? A. Yes. [96]

Q. After the Schlumberger was taken what occurred?

A. Then we took a formation test.

Q. Who made the formation test?

A. M. O. Johnson Company.

Q. How many formation tests were made, if you recall?

A. There were several, three formation tests.

Q. Do you know at what depths the formation tests were made?

A. The first one was made at the depth of 4268. The side wall packer failed to hold.

Q. What do you mean by the side wall packer failed to hold, if you know?

A. The packer didn't squeeze over against the walls of the well to release the weight from the gas zone.

Q. To put it briefly, was the first Johnson formation test successful or unsuccessful?

A. Unsuccessful.

Q. What was done with respect to making a second test?

(Testimony of Joseph Faria, Jr.)

A. We drilled ahead with a six and a quarter bit with a smaller hold to make a shoulder for the next test.

Q. Was that done? A. Yes.

Q. When was the second Johnson formation test made?

A. It was made shortly after that, just a few days, if I remember right.

Q. In what month or what year?

A. It was in October.

Q. Of what year? A. 1943.

Q. Was that second Johnson formation test successful or unsuccessful?

A. We got a light steady blow from that.

Q. Were you present when the test was made?

A. Yes. [97]

Q. Did you observe any of the gas coming from the well? A. Yes.

Q. Could you smell it?

A. I could see it. I was present there with Mr. Norris and saw it come out. First there was a slush of mud come through and then the gas came afterwards.

Q. Where did it come from?

A. It came from the hole, from this hole we had drilled.

Q. Did it come out through the drill pipe?

A. It came out through the drill pipe, yes.

Q. After the second test was made what did you do with respect to further operations?

(Testimony of Joseph Faria, Jr.)

A. We drilled ahead deeper, and then we took a temperature survey.

Q. How deep were you now?

A. We were down about 4378 feet.

Q. When you had reached that depth what, if anything, occurred?

A. We still had this gas in the showings, and when we took this temperature survey it showed there was gas coming from 4268 to 4300 feet.

Q. Do you know anything about reading a temperature survey, yourself? A. No, sir.

Q. So when you say the temperature survey showed it, that is something you learned by being told, is that right? A. That is right.

Mr. Bourquin: May that go out, your Honor?

Mr. Scampini: That may go out, counsel.

The Court: The jury will disregard that testimony. [98]

Q. (By Mr. Scampini): Was there a third Johnson test made? A. Yes.

Q. On what date was that test made?

A. I don't recall the date exactly, but it was made the same month, in October.

Q. Of 1943? A. Yes.

Q. Do you know the depth?

A. Around 4268 feet.

Q. Was that test successful or unsuccessful?

A. That was successful.

Q. Were you present? A. Yes.

Q. What did it show, or what did it result in?

(Testimony of Joseph Faria, Jr.)

A. We have the chart, the report on that, that shows——

Q. Not from the report, from your personal knowledge what did you see?

A. It showed gas.

Q. How much volume of gas, if you know?

A. The volume was 100,000 cubic feet per day, estimated by the Johnson people.

Q. In your presence? A. Yes.

Q. Have you set any casing in this well?

A. Yes.

Q. How much casing had been set by you?

A. 4343 feet.

Q. How big casing? A. 7-inch casing.

Q. Had the casing been perforated at any time?

A. Yes.

Q. What do you mean by perforation?

A. By lowering a gun into the well and shooting holes in the casing.

Q. Were perforations made for the purpose of making these tests that you have related?

A. Yes.

Q. Who shot the casing?

A. Schlumberger. [99]

Q. Were you present when it was shot?

A. Yes.

Q. Do you recall when that was done?

A. Yes, it was done in October, but the exact date I don't know.

Q. October of what year? A. 1943.

Q. After the third Johnson formation test had

(Testimony of Joseph Faria, Jr.)

been made what happened, or what did you do in respect to further development?

A. This third formation test was made during the time after we had placed this casing in the well. The Dow Chemical Company had their expert chemist up there, and he took a sample of this gas.

Q. Just a moment. Did you call the Dow Chemical Company to come in and make an analysis of the gas? A. Yes.

Q. Do you recall the name of the person who was sent to make the test?

A. Yes, Mr. Obreg.

Q. Of the Dow Chemical Company?

A. Yes.

Q. Was a sample of gas taken and an analysis made by Mr. Obreg? A. Yes.

Q. Did you receive a report from Mr. Obreg on that? A. Yes.

Q. Was that report submitted to Mr. Norris?

A. Yes.

Q. After that was done, what, if anything, further was done with respect to development?

A. We had a report then after that—we went down and shot some more holes just below that zone, 4268, and made another test, and when we made this test we had 125,000 cubic feet of gas, estimated 125,000 cubic feet of gas per day. [100]

Q. Who made that test?

A. M. O. Johnson.

Q. In your presence? A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. This was the latter part of October, 1943?

A. Yes.

Q. After the third test had been completed what, if anything, further was done in respect to operations?

A. We had a report then written up by Byron Norris.

Q. A report referring to what?

A. To him—that it was very encouraging—

Q. No, don't tell us what the report said. That may go out. Just tell us what was the purpose of the report.

A. To raise more capital.

Mr. Bourquin: Just a minute, please. That may be a question that would come in for discussion here. We will object to this witness giving an opinion as to the purpose of the report.

Mr. Scampini: I will withdraw the question, Counsel. Let me put it this way:

Q. Did you at this time continue operations looking towards further drilling?

A. We had this report written—

Mr. Scampini: Just a moment.

Mr. Bourquin: Just a moment. I move that that be stricken as not responsive.

The Court: That may go out.

Q. (By Mr. Scampini): Did you ask Mr. Byron Norris to submit to the Cal Bay Corporation a report concerning the drilling [101] operations which had been conducted up to that time?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. And didn't Mr. Byron Norris submit that report to you? A. Yes.

Q. Do you know the date of that report?

A. It was November 1, 1943.

Q. When you received that report what, if anything further, did you do in respect to further operations?

A. We had a permit to raise additional capital.

Q. From whom did you obtain the permit?

A. From the Division of Corporations.

Q. How many more shares were raised pursuant to that permit? A. 45,000 shares.

Q. Did you continue operations or did you suspend operations?

A. We suspended operations there for the reason it was in the wintertime, and we raised the money through the winter and then went on and started drilling in July, 1944.

Q. During this first period of drilling up to the time when operations were suspended in the latter part of October, how many shifts or tours had been used by you in drilling?

A. Pardon me, I didn't—

Q. How many shifts.

A. Refer to the date.

Q. October, 1943.

A. Three shifts a day.

Q. Three shifts a day? A. Yes.

Q. The first five months of operation you used three shifts a day? A. Yes. [102]

Q. Approximately how much does it cost—

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: Just a minute. May I ask a question? I want to object to that as leading, because when we get to the facts here we may not agree. I object to the question as leading and ask that the answer go out. The first five months is confusing to me. I understood from the witness' own account they had been operating only from July 17th to October 27th. That is three months and ten days.

Mr. Scampini: I will stand corrected, your Honor, and I will try to refrain from asking leading questions.

Q. Mr. Faria, again going back to the subject, if I recall your testimony you started drilling on July 14, 1943, is that right? A. Yes.

Q. When did you suspend drilling operations?

A. In November, November, 1943.

Q. During the period of time between July 14th and November of 1943, how many shifts a day did you use? A. Three shifts.

Q. And how much a day does it cost to engage three shifts for the purpose of drilling a well?

Mr. Bourquin: I object to that as irrelevant and immaterial, your Honor. That is not the proper approach. It is too speculative and conjectural evidence on which to predicate value.

Mr. Scampini: The cost of drilling this well——

Mr. Bourquin: The cost of experimentation.

Mr. Scampini: The cost of drilling a well is always a material factor in determining the value of a lease, provided it is a reasonable cost.

(Testimony of Joseph Faria, Jr.)

The Court: I would like to have that question read.

(The last question was read by the reporter.)

Mr. Scampini: Per day.

The Court: Isn't that an academic question?

Mr. Scampini: I do not think so, your Honor, if I may respectfully say so.

The Court: What does it cost for three shifts a day? Do you mean what is the reasonable cost? Are you asking the witness what it cost him for three shifts, or what is the general cost of a shift of men in drilling a well?

Mr. Bourquin: Your Honor, if I may say this, what materiality would it have until the foundation has been established that the drilling served some purpose that would result in the value to be fixed? That is what I am thinking of. Certainly if a man drills a dry well, what it costs to drill the well would not be of any moment in valuing the property.

The Court: Then your objection goes more to the order of the proof. It may be that you might reserve this question until you have established more of a prima facie case as to its value for oil and gas. You might make a note of it so you won't be deterred from bringing it up again.

Mr. Scampini: We will come back to that. [104]

Q. When were drilling operations again resumed?

A. Began rigging up in June, 1944.

(Testimony of Joseph Faria, Jr.)

Q. What did you do in respect to conducting operations in June, 1944?

A. Well, we swabbed the well.

Q. How many shifts did you use in June, 1944?

A. One shift.

Q. Up to June, 1944, or the time when you resumed operations, had you received any information from any source of any contemplated action to condemn any part of this property by the United States? A. No.

Q. When did you start drilling deeper?

A. In July.

Q. Approximately what date?

A. I don't recall exactly the date; it is in the log.

Q. Was it before or after the filing of the instant action by the United States?

A. Before.

Q. When was it that you first received notice of the filing of the action by the United States?

A. I remember that was July 25, 1944.

Q. Where were you when notice was received by you? A. I was there at the properties.

Q. What form of notice did you receive?

A. Condemnation.

Q. Was it served on you? A. Yes.

Q. After you received that notice what did you do in respect to further operations?

A. I met with the Board of Directors and we hired the firm of Fitzgerald, Abbott & Beardsley, of Oakland. [105]

(Testimony of Joseph Faria, Jr.)

Q. Did you continue to drill after you had been served with notice? A. No.

Q. What, if anything, was done after notice was served upon you in respect to negotiations being conducted with the Navy?

A. Mr. Beardsley got in touch with the Navy.

Q. Tell what you did.

A. I went there with Mr. Byron Norris, the engineer, and we met with Captain Bedell, at Mare Island.

Q. Who else was present at that conference?

A. Mr. Bush.

Q. Anyone else of the Navy, that you recall?

A. No, I don't. There was Mr. Bedell and his staff.

Q. What, if anything, transpired at this conference?

Mr. Bourquin: We are faced with the notice here in the proceedings, with the complaint and the answer that they did not have enough time to find the minerals here. Well, I cannot see, nevertheless, how what transpired after the filing, what passed between this man and Navy personnel, what bearing that has on the question of value. I want to object to it as immaterial and irrelevant.

The Court: This was after the complaint in condemnation was filed?

Mr. Bourquin: It was after the complaint in condemnation was filed. It has been stated by both counsel here before the jury and to your Honor that there were negotiations and a request to be

(Testimony of Joseph Maria, Jr.)

allowed to continue there, and they were given [106] leave, and that they ran along until finally the leave was cut off in January, January 13, 1945.

The Court: Do you need to bring out anything more than the matters that have been referred to?

Mr. Scampini: Yes, your Honor; I desire to prove by this witness that as the result of conferences conducted between the witness and his engineer and geologist, and representatives of the U. S. Navy, a stipulation was entered into, approved by this court, whereby they were given an extension of time and possession of parcels 58 and 59 was held in suspension until thirty days after written notice was to be served, and during that period of time they were to be allowed to drill.

Mr. Bourquin: Let's take the stipulation and put it in evidence. We agree to that.

The Court: There is no dispute about that matter; just make a statement.

Mr. Bourquin: Correct.

The Court: Is the statement you just made, is that acceptable to you?

Mr. Bourquin: Yes, your Honor. The stipulation is on file and your Honor made an order.

Mr. Scampini: That is all I was coming to, that a stipulation was entered into.

The Court: Do you wish to read the stipulation?

Mr. Scampini: Yes, I intend to, your Honor.

The Court: Suppose you read the stipulation and that will take care of it. Is it long?

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: Yes, your Honor. I will now read into the record——

The Court: I say, is it a long stipulation?

Mr. Scampini: No. It is about a page and a half.

The Court: All right.

Mr. Scampini: Half a page, rather.

The Court: Read it to the jury.

Mr. Scampini: Stipulation dated, I believe, September 18, 1944. My file does not indicate the date, I believe that is the date.

Mr. Bourquin: I don't know.

Mr. Scampini: I have not been able to find it in the file.

Mr. Bourquin: I remember very well there in August and September.

The Court: It was some time subsequent to the filing of the suit?

Mr. Bourquin: Yes.

Mr. Scampini: Yes, your Honor, it was.

Mr. Bourquin: It culminated from some oral negotiations of the parties and it was the means of perfecting it, so the purpose was so the navy maintained that right to move ammunition when they had to.

Mr. Scampini: Accordingly, I now read into the record [108] the stipulation——

Mr. Bourquin: May I see the one that you have, because I know there was more than one written.

(Testimony of Joseph Faria, Jr.)

Here is one September 28, 1944, approved and ordered—it is right. The copy you have is the copy of the stipulation, Mr. Scampini. While it is not dated, I see you have a written pencil mark here. September 28th is the date the judge made the order.

Mr. Scampini: That's right. The stipulation reads as follows:

“Whereas, Cal Bay Corporation, a California corporation, defendant sued herein as First Doe Corporation, is in possession of Parcels 58 and 59 referred to in the complaint as lessee thereof, and is desirous of continuing in possession thereof for the purpose of further prosecuting its drilling and other operations thereon, it is stipulated as follows:

“1. Notwithstanding the order for the possession made herein on July 24, 1944, said defendant may continue in possession of said parcels and continue its operations thereon until one month after service by the plaintiff on said defendant, or on its attorneys herein, of written notice of the termination of said right to possession.

“2. The date upon which said defendant vacates said parcels shall be the date as of which compensation for the taking of said parcels and of any and all interest [109] therein shall be deemed to have accrued.

(Testimony of Joseph Faria, Jr.)

“3. No interest on any award made for said parcels or for either of them, or for an estate or interest therein shall accrue prior to the date on which said defendant vacates such said parcels.

M. MITCHELL BOURQUIN,
Special Assistant to the Attorney General,
Attorney for the Plaintiff.

FITZGERALD, ABBOTT &
BEARDSLEY,

as Attorneys for the Defendant Cal Bay Corporation.”

This appears: “The above stipulation is approved and it is so ordered September 28, 1944,” and I am under the impression that your Honor made that order.

The Court: I understand that one of the jurors wanted to get away a few minutes before twelve today, so we will take the adjournment a little earlier today. We will reconvene at two o'clock. The jurors will return at that time, and bear in mind in the meantime the admonition of the court.

(A recess was taken until two o'clock p.m.)

Afternoon Session, January 23, 1947

2:00 o'Clock P.M.

The Court: The Jurors are all present. You may proceed.

JOSEPH FARIA, JR.

recalled on behalf of defendants; previously sworn.

Direct Examination

(Resumed)

By Mr. Scampini:

Q. Mr. Faria, after the stipulation which we read into the record this morning, was entered into between the plaintiff and the Cal Bay Corporation, what next did you do?

A. I met with the board of directors and we hired, we decided to hire the firm of Fitzgerald, Abbott and Beardsley, in Oakland.

Q. You have gone all over that. Perhaps you did not understand me. After the stipulation which we read into the record this morning was executed, what next did you do in connection with the operations on the well?

A. What was the date on this now? Can I refer to the log?

Q. Some time in the month of September the stipulation was entered into. When did you resume drilling operations?

A. We resumed drilling operations some time in August.

Q. Some time in August? A. Yes.

Q. Was it after you had received that letter from Captain Ernest Williams? A. Yes.

Q. What did you do in connection with the drilling operations [111] when you resumed operations?

(Testimony of Joseph Faria, Jr.)

A. Well, we went, we began drilling a head with a six and a quarter bit.

Q. What size hole were you cutting at this depth?

A. Six and a quarter and prior to that it was nine and five-eighths.

Q. What kind of drilling outfit were you using?

A. Rotary, seven and a half.

Q. In the course of that drilling, what did you encounter?

A. We encountered hard shale and sand at times and shale and sand and gas.

Q. When did you next see or observe any gas showings, if you recall?

A. We noticed gas on the ditch after it was to the depth of around forty-seven hundred feet.

Q. When you observed these gas showings, what did you do about it?

A. We kept our mud weighed up and took cores, we took a core.

Q. Was Mr. Norris present during the course of this drilling?

A. I don't remember whether he was or not at that time.

Q. Did he make visits to the well from time to time? A. He did make visits, yes.

Q. After examining the cores, then what?

A. The cores he would examine and they sometimes would be sent to the micropaleontologist, Mr. Goodkoff from Los Angeles.

(Testimony of Joseph Faria, Jr.)

Q. Go ahead and tell us what happened after you resumed the drilling operations?

A. We drilled and the deeper we would [112] go the greater gas showing. It would begin to show some gas on the ditch all the time, so much so we could strike a match to it and have a flame anywhere in that ditch, take a five-gallon bucket and fill it about three-quarters full of this mud and carry it away and put a match to it and set off a blaze about twelve or fourteen inches long.

Q. What depth were you when this happened?

A. It occurred all the way from the depth of around forty-seven or forty-eight hundred feet on down.

Q. Did anything of an unusual character happen in the course of drilling?

A. Yes. We had heaving of shale, the shale was shuffing in and gave us considerable trouble. At times the bit would stick on that, bridges would form.

Q. Would you explain for the benefit of the record and the jury what you mean by heaving shale and bridges?

A. As the shale shuffled in up against the drill pipe and the bit, when you would get that at the end, it forms a bridge and it sticks your pipe, the pipe stuck and we had to use oil to loosen it.

Q. Do you recall the first incident when you had to use oil for the purpose of loosening the pipe?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. Approximately when was it, and at what depth?

A. I would have to have the log. This happened on November 8, 1944.

Q. What did you do about loosening the pipe at that time? [113]

A. We had to use oil which we had to pump on down through the center of the drill pipe, the bottom, the bit. It would return and then up in and around the drill collar and pipe, and then we left it stand there for about eight hours.

Q. Is that a usual or a normal process of loosening pipe in drilling wells? A. Yes.

Q. What happened to this oil that you poured into the well for the purpose of loosening the pipe?

Mr. Bourquin: I submit what happened is immaterial and irrelevant. I object to the form of the question.

Q. (By Mr. Scampini): What happened to the oil that was poured into the well?

A. It circulated out.

Q. What do you mean by that?

A. On the return circulation, when we started the mud pumps it pumped it on out into the ditch and down the hill.

Q. Did you have any incident, do you recall any incident when the drill pipe split? A. Yes.

Q. When was it, approximately?

A. That happened when we were running the first shift, the first eight-hour shift in August, I believe.

(Testimony of Joseph Faria, Jr.)

Q. Let me clarify that for the record. When you resumed operations, how many shifts did you employ?

A. We were just employing one shift, one eight-hour shift.

Q. Did you continue operating with the one eight-hour shift? A. No. [114]

Q. What did you do?

A. Well, we decided to hire a three-shift crew to speed up the operations.

Q. When the pipe split over there, you still had a one-shift crew? A. That's right.

Q. Describe what happened.

A. Then, when the drill pipe pulled in two, we got in what was called a fishing job, fishing out the balance of pipe from this hole. We got back out of there and the bit, a ball was formed in the bit, and it was against the shoe of the casing, the very bottom. This casing was down about forty-three hundred and forty-three feet, down on the bottom of the casing. We didn't recover this, as I said, the drill collar and the bit. That is when we decided to have a three-shift crew.

Q. What did you do when the bit would be stuck in the well? A. We whipstocked.

Q. What is that?

A. A whipstock is a large chunk of steel. I don't recall the length of it, but I imagine about eighteen feet long and it is tapered and you then have to cut a window in the casing for a section about twenty feet of casing through the steel casing, mill

(Testimony of Joseph Faria, Jr.)

it out. You set the whipstock and you go down at an angle about three degrees.

Q. Approximately what depth was the whipstock set?

A. A little over four thousand feet.

Q. How long did it take to complete that whipstock?

A. It takes quite a while, the milling of that casing. [115]

The Court: How long did it take, that is the question.

The Witness: I don't know. I would say a week.

Q. (By Mr. Scampini): Then after you resumed operations on normal drilling operations, did you have any other incident?

A. Yes, we had considerable trouble in heaving shale as we went down.

Q. In the new hole? A. Yes.

Q. Was the hole you drilled through that whipstock, was that alongside the old hole?

A. That is off to the side.

Q. You had to come back again down alongside the old hole? A. Yes.

Q. Did you encounter the same difficulty as you had previously? A. Yes.

Q. Was there anything of an unusual character?

A. There was a lot of gas showing and heaving shale and ditching and sticking pipe.

Q. Did you have to pour oil into the well more than once?

(Testimony of Joseph Faria, Jr.)

A. I don't recall. I remember one time. Yes, we poured oil in twice.

Q. When was the second incident?

A. The second incident was when we was down about two stands and a single.

Q. When was that?

A. That was in November, 1944.

Q. What do you mean by two stands and a single?

A. I would say the length of the two stands of drill pipe and a single would be about two hundred feet, I imagine. [116]

Q. I was going to clarify *in own* mind, because I am only a lawyer—you mean the bit was about two hundred feet from the bottom of the well?

A. Yes.

Q. What were you doing at that time, were you trying to come out of the well?

A. We were coming out.

Q. What happened?

A. The force was off the end, on the bit, and it was—there was ditching and heaving in from the shale, that heaved up against the collar and bit and caused it to stick.

Q. That was the second time it had stuck?

A. Yes.

Q. Then did you have to loosen the bit?

A. We poured in oil.

Q. What do you mean by that?

A. We pumped oil down the well, the drill pipe.

Q. How much oil was poured into the well for

(Testimony of Joseph Faria, Jr.)

that purpose? A. About eight barrels of oil.

Q. Then what did you do?

A. We let it stand there for a while.

Q. How long?

A. About eight hours, I imagine.

Q. Then what happened?

A. The drillers, they tried to pull it out. They were not able to get it out.

Q. Then what happened?

A. Then they circulated, circulated that oil out of the well.

Q. Where did that oil go?

A. It went on down the hill.

Q. During this period of time, do you know anything about the [117] weight of the mud that was being used?

A. It was 115 pounds, 114 or 115 pounds of mud.

Q. Did you have to employ a specialist again this time? A. Yes.

Q. For the purpose of your mud?

A. Yes.

Q. Who?

A. Ed Mohr of the Baroid people.

Q. What is Baroid?

A. Baroid is a mud weight—it is a material that is used to increase the weight of the mud you have in your well.

Q. Do you know the weight of the mud that had to be used for the purpose of drilling the well when you got the first job you have described in 1943?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. What was the weight of the mud at that time?

A. The mud, I would believe it was about ninety-six pounds.

Q. On this second occasion when you were down about forty-nine hundred feet in 1944, what weight of mud did you have to use?

A. We had to use 115-pound mud.

Q. Were any tests made, if you know, as to salinity or the salt content of the mud and water coming out of the well at this period?

A. Mr. Ed Mohr made a salinity test.

Q. What happened on or about November 29, at 11 o'clock a.m., if you know?

A. The well blew in.

Q. What do you mean by "blew in?"

A. Well, the mud weight lightened up to 110 pounds, it was not heavy enough to hold the pressure of gas and oil down below there and it just lifted right on out the hole.

Q. What happened, describe it?

A. It blew it up in the air about eighty feet.

The Court: Were you there at the time?

A. (By the Witness): No, I was not there. This is what the men told me.

The Court: Well, there you are.

Mr. Bourquin: I move that answer go out.

The Court: Yes. You ought to put the witnesses on who know these things.

Q. (By Mr. Scampini): When did you arrive at the well?

(Testimony of Joseph Faria, Jr.)

A. When did I arrive at the well? Just after the well was under control.

Q. Approximately what time was this?

A. I would say about one o'clock.

Q. What were the men doing when you arrived there?

A. Well, when I got on the site, the well site there, near the driller, I met Mr. Mayes, the drilling superintendent, and I said to Mr. Mayes——

Q. No, no. Say what they were doing?

A. Well, what they were doing, I don't remember. Everything was at a standstill.

Q. What did you see at or on or about the well?

A. I noticed oil all over the derrick floor, rotary table, the draw works and tubing that was standing in the derrick. [119] There was a tubing there about, I imagine, about eighty feet in length that was standing there. I don't know how many joints. The oil was over the drill pipe and on the platform, the wind carried the oil over there.

Q. Did you see or did you make any study or observation of the mud fluid that came out of that well?

A. Ed Mohr made a study of it.

Q. Did anybody else?

A. Not that I remember.

Q. What was done next after you appeared on the well?

A. I tried to get this drill pipe out and we found that it was hard to take out, so I hired Mr. Bradford.

Q. Who is Mr. Bradford?

(Testimony of Joseph Faria, Jr.)

A. He is a well experienced man in the oil fields and he knew about fishing, that is, trying to get stuck drill pipe out of a well.

Q. How long did it take you to get Mr. Bradford to come to the well?

A. He was there, if I remember right, just a day or so afterward.

Q. Then what was done?

A. Then we tried to jar the pipe loose and he took a pull on it and tried to see if he could pull it out. He couldn't do anything about it, so he went—tried again the Alaberton people with their pump to try to start circulation and we built the pump pressure up to 3,700 pounds, but they couldn't loosen that from the sanded part of the well, the pressure was not strong enough to do it. Then we decided to go on with the left-hand drill pipe to unscrew the pipe out.

Q. How long did that take?

A. Well, we worked there, if I remember right, three or four days, or a week.

Q. Were you able to unscrew, to extract all of the pipe from the well?

A. No. They could only go down as far as the bottom of—not quite the bottom on the casing, about ten feet from the bottom.

Q. What did you observe, or what did you discover there? A. The casing was collapsed.

Q. Do you know that of your own personal knowledge?

A. Well, that is what they told me.

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: We ask that go out.

Mr. Scampini: That may go out.

Q. I will show you here a photograph, Mr. Faria, and I will ask you to look at it and tell me whether or not you recognize it and can identify it?

A. Yes.

Q. What is that photograph?

A. That is a photograph of the derrick from the top looking downward towards the floor of the derrick.

Q. When was that taken, if you know?

A. I don't quite remember, but I believe it was taken after the blow.

Q. After the blow. By whom?

A. By McBride.

Q. Under your direction and supervision?

A. Yes.

Mr. Scampini: I offer this in evidence as Defendants' next exhibit in order. [121]

The Court: It may be admitted.

(Thereupon the photograph in question was received in evidence and marked Defendants' Exhibit 18.)

[Defendants' Exhibit 18 appears on Page 1244.]

Q. (By Mr. Scampini) At or about this time, did any unusual developments take place at Honker Bay just across the river from the property of the Cal Bay Corporation, and I am now pointing to a red spot on the map which has been marked For

(Testimony of Joseph Faria, Jr.)

Identification as Defendants' Exhibit 12 (11); opposite the yellow spot, did anything develop there that you observed or noticed? A. Yes.

Q. What happened there?

A. They made a gas discovery.

Q. Do you know what happened; state what happened?

A. It came out in the Oil World that the Standard Oil Company had made a discovery of a gas well.

Q. Did you see anything going on at Honker Bay at that time?

A. You could see the derrick and they were drilling over there in that part of the country.

Q. You had then received information by reading about it; is that right?

A. My engineer mailed me a clipping showing what had happened over there.

Mr. Bourquin: Your Honor, I don't know how that affects this case.

The Court: Well, Counsel——

Mr. Scampini. I will contend——

The Court: I don't think the testimony concerning what [122] happened based upon articles in the magazine is competent.

Mr. Scampini. I will consent it may be stricken out, your Honor.

The Court: It is hard to say what might be a discovery over there. The vice of it is we might——

(Testimony of Joseph Faria, Jr.)

Mr. Scampini. We will get that out through our experts, your Honor.

The Court: The motion will be granted. The testimony with reference to this so-called gas strike across the river will be stricken. The Jury will disregard it.

The Clerk: Counsel, for the purpose of the record, that map is No. 11.

Mr. Scampini: No. 11. Thank you.

Q. Well, after hiring Mr. Bradford, were you able to extricate all of the pipe down in the well?

A. No.

Q. What did you decide to do then?

A. We decided to——

Mr. Bourquin: We submit, your Honor, it is what was done.

The Court: Well, it is taking a long time, Counsel. I don't want to appear to be impatient, but so much of this testimony, Counsel, is taking hours. I think it is rather time-consuming.

Mr. Scampini. What I have in mind, your Honor, the opening statement of Counsel, he practically inferred to the Jury that they proposed to prove that these men dillydallied [123] along and everything happened to them as though they were doing it on purpose. I am trying to show the good faith of the operation.

The Court: I don't think Counsel made any statement to that effect. He merely pointed out the various things that happened. This witness is the

(Testimony of Joseph Faria, Jr.)

owner and, of course, being the man who owned the leases or representing the company he is entitled to testify as to physical facts concerning the property and what he knows about it, but when it comes to these matters that unquestionably, I can see, you have other people here who actually participated and can testify. It would save time if you would go to that, rather than have the witness just give a narrative of these things. You had somebody there tending the oil well who knows about these things. You should get your information from those people.

Q. (By Mr. Scampini) What month was it in 1944 that Mr. Bradford was hired by you to work on the well?

A. If I remember right, around the first of December, 1944.

Q. Did Mr. Bradford work on the well at or about December 15, 1944?

A. Yes, I believe he was.

Q. I now show you what is a photostat of a notice of termination of right to possession of Parcels 58 and 59 in this action, and I will ask you when you were served with a notice of that character?

A. There seems to be—the 20th of December is here. [124]

Q. When were you served with it?

A. Along about the 15th, I think.

Q. The 15th of December?

A. I think it was.

Q. What did you do when you were served with that notice?

(Testimony of Joseph Faria, Jr.)

A. Well, we ceased operations.

Q. Did you have any conference with the representatives of the Navy?

A. Yes. We were called down to Captain Williams' office.

Q. What was said by you and what was said by Captain Williams?

Mr. Bourquin: Just a minute, your Honor.

A. When I arrived there, Captain Williams——

Mr. Bourquin: We submit the notice speaks for itself. We will object to the conversation of the witness with the Navy personnel or anybody else as hearsay and incompetent, irrelevant and immaterial.

The Court: I will sustain the objection to the conversation.

Mr. Scampini: I now offer in evidence as Defendants' Exhibit next in order the Notice of Termination of Right to Possession of Parcels 58 and 59 in this action, and I ask permission to read the contents into the record. It is rather short.

The Court: It may be admitted.

(Thereupon the document in question was received in evidence and marked Defendants' Exhibit 19.)

[Defendants' Exhibit 19 appears on pages 1245.] [125]

The Court: This is the notice that is referred to in that stipulation you read to the Jury this morning?

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: Yes, your Honor; that's right.

"To defendant Cal-Bay Corporation, a corporation, and to Messrs. Fitzgerald, Abbott & Beardsley, its attorneys:

"You and Each of you will please take notice as follows:

That pursuant to the Order of Court modifying Order for Immediate Possession as to Parcels 58 and 59 in this action, dated September 28, 1944, your right to possession of Parcels 58 and 59, as the same are designated in the Complaint and Order for Immediate Possession on file herein, is hereby terminated; that defendant Cal-Bay Corporation may continue in possession and may continue its operations on said Parcels 58 and 59 until thirty (30) days after service of this Notice as provided in said Order of Court; and that thereupon defendant Cal-Bay Corporation shall forthwith vacate said Parcels 58 and 59 and shall surrender the same to plaintiff.

"Reference is made to the said Order of Court dated September 28, 1944, which is incorporated in this Notice by reference.

"Dated, December 15, 1944.

/s/ M. MITCHELL BOURQUIN

Special Assistant to
The Attorney General
Attorney for Plaintiff."

(Testimony of Joseph Faria, Jr.)

Underneath the signature appears the following:

“Receipt of a copy of the foregoing Notice of Termination of Right to Possession of Parcels 58 and 59 in this Action is hereby acknowledged, this 15th day of December, 1944.

“FITZGERALD, ABBOTT &
BEARDSLEY,

Attorneys for defendant
Cal-Bay Corporation”

Now, may it please the Court, when this morning in the reading of the stipulation there was not read into the record the Order of Court dated September 28, 1944, which is referred to in this Notice, the the stipulation dated September 18, 1944. It appears from the trial and records in this proceeding that subsequently there was filed a Petition for Order Modifying Order of Immediate Possession as to Parcels 58 and 59, and that on September 28, 1944, your Honor sitting in this Court entered an Order Modifying Order of Immediate Possession as to Parcels 58 and 59.

Mr. Bourquin: That is correct.

The Court: The order modifying to conform with the stipulation?

Mr. Scampini: Yes, your Honor. May I know

(Testimony of Joseph Faria, Jr.)

read into the [127] record the order made by your Honor?

The Court: Yes.

Mr. Scampini:

“Order Modifying Order of Immediate
Possession as to Parcels 58 and 59

“Upon reading the Petition of plaintiff, United States of America, and defendant, Cal-Bay Corporation, and good cause appearing therefor, it is hereby ordered that the Order for Immediate Possession heretofore issued out of this Court on July 24, 1944, be and it is hereby amended in respect to said defendant and Parcels 58 and 59 as the same are designated in the Complaint and said Order for Immediate Possession on file herein so that said defendant may continue in possession and may continue its operations on said Parcels 58 and 59 until thirty (30) days after service by plaintiff on said defendant, or on its attorneys herein, of written notice of the termination of said right to possession; that thereupon said defendant shall forthwith vacate said parcels and shall surrender the same to plaintiff.

(Testimony of Joseph Faria, Jr.)

Done in Open Court this 28 day of September, 1944.

LOUIS E. GOODMAN,

Judge, United States District
Court Northern District of
California. [128]

Q. Will you now state, Mr. Faria, what was done by you in order to comply with that notice to vacate the premises within 30 days?

Mr. Bourquin: Is that material or relevant? I am wondering, your Honor, if it has something to do with the value of the property.

The Court: After the service of this notice did the defendants proceed with the well any further?

Mr. Scampini: They proceeded to abandon the well as required in the event that drilling ceased, your Honor. They had to remove within thirty days from the premises.

Mr. Bourquin: There is no objection to that being shown, your Honor.

The Court: Is it necessary to go into any detail in that respect? Did they take the casing out and gather in the material that was around there?

Mr. Scampini: That is about all.

The Court: Just let him state that. I guess counsel would accept that statement without the testimony of the witness, as to what was done.

Mr. Bourquin: Yes, your Honor. We will stipulate that nothing was done after December 15th.

(Testimony of Joseph Faria, Jr.)

but to remove the rig and recover what of their equipment they could take away, plug the hole, and abandon it.

Q. (By Mr. Scampini) Mr. Faria, at or about October, 1944, [129] prior to the receipt by you of this notice, did you make any purchase of casing for the purpose of continuing your drilling?

A. Yes, I made a purchase of five—

Mr. Scampini: Wait a minute. Counsel wishes to make an objection, I think.

The Court: Maybe you are unduly anticipating him.

Mr. Scampini: I thought he was going to object.

Mr. Bourquin: I think, to be consistant, your Honor, we will have to object to that as irrelevant and immaterial. It has no bearing on the question of market value. I thought he had his well cased.

Mr. Scampini: Down to 4373 feet, and he bought this casing for the purpose of carrying the casing down to 4900 feet, and, I take it, that is all part of the cost of this well to our client. It was all purchased in reliance on that stipulation, if it please the court.

The Court: I beg your pardon?

Mr. Scampini: It was all purchased in reliance on the stipulation.

The Court: Do I understand you have any objection or not to it?

Mr. Bourquin: To that extent, your Honor, I

(Testimony of Joseph Faria, Jr.)

am not going to object, if counsel and the witness can agree between themselves as to whether it was 5000 feet, as this witness says, or 6000, as Mr. Scampini stated. [130]

Mr. Scampini: I think you will find it was 6000 feet, and there was a reason for buying 6000 feet, counsel.

The Court: I think the court will allow the testimony as to how much casing was bought to go into the record, and we will take care of the matter of instructions as to the standards of determining value at the proper time.

Q. (By Mr. Scampini) Mr. Faria, I again ask you the question, did you have occasion to purchase any casing for the continuation of drilling?

A. Yes.

A. How many feet of casing did you buy?

A. 5000 feet.

Q. Why did you buy 5000 feet?

A. To develop the well.

Q. How many feet of casing were on the well at that time?

A. 4343 feet of 7-inch casing.

Q. What size casing did you buy on the last occasion?

A. 4 $\frac{1}{4}$ inches in diameter.

Q. Mr. Faria, referring to parcels 58 and 59, namely, the land of Edward Faria and Mary Faria, in respect to those two parcels it is a fact in the

Testimony of Joseph B. Allen, Jr.

...would that the lease taken by you was then owned by Old Bay Corporation, is that right?

100

Q. With the exception of 22.11, does no the southeast corner of parcel 31, which had been retained by you, is that correct? A. Yes.

Q. Have you any opinion as to the value of the present issue of Cal Day Corporation held by the company on 28 and 29 of January, A.D. 1944?

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

Mr. Thompson: Are you asking now the question as to the value of the lease?

M. Scampano: The Cassinid eiders

Mr. Seymour: Your Honor, we believe the Code requires that the property be valued as a unit.

The Court: You mean the value of the all rights is 1 unit?

Mr. Thompson. The all rights, and questions between lesser and lesser are matters between themselves and which the confederate, the Government, is not concerned; therefore we object to this question on that count.

Mr. Secretary:— If I choose the court, it would be entirely unnecessary to go to London to see the Duke of Devonshire on a point of law, but I consider section 125 of the Bill is still *in statu quo* and I am not at all sure that it is better than the old law. I am sure that the law is not better than the old law.

(Testimony of Joseph Faria, Jr.)

am not going to object, if counsel and the witness can agree between themselves as to whether it was 5000 feet, as this witness says, or 6000, as Mr. Scampini stated. [130]

Mr. Scampini: I think you will find it was 6000 feet, and there was a reason for buying 6000 feet, counsel.

The Court: I think the court will allow the testimony as to how much casing was bought to go into the record, and we will take care of the matter of instructions as to the standards of determining value at the proper time.

Q. (By Mr. Scampini) Mr. Faria, I again ask you the question, did you have occasion to purchase any casing for the continuation of drilling?

A. Yes.

A. How many feet of casing did you buy?

A. 5000 feet.

Q. Why did you buy 5000 feet?

A. To develop the well.

Q. How many feet of casing were in the well at that time?

A. 4343 feet of 7-inch casing.

Q. What size casing did you buy on the last occasion?

A. $4\frac{3}{4}$ inches in diameter.

Q. Mr. Faria, referring to parcels 58 and 59, namely, the land of Edward Faria and Mary Faria, in respect to those two parcels it is a fact in the

(Testimony of Joseph Faria, Jr.)

record that the lease taken by you was then owned by Cal Bay Corporation, is that right?

A. Yes.

Q. With the exception of 73.51 acres on the southeast corner of parcel 59, which had been retained by you, is that right? A. Yes.

Q. Have you any opinion as to the value of the leasehold estate of Cal Bay Corporation held by it in parcels 58 and 59 as of January 15, 1944?

A. Yes. [131]

Mr. Bourquin: Are you asking now the question as to the value of the lease?

Mr. Scampini: The leasehold estate.

Mr. Bourquin: Your Honor, we believe the Code requires that the property be valued as a unit.

The Court: You mean the value of the oil rights as a unit?

Mr. Bourquin: The oil rights, and questions between lessor and lessee are matters between themselves with which the condemnor, the Government, is not concerned; therefore we object to this question on that ground.

Mr. Scampini: If it please the court, it would be entirely satisfactory to us to evaluate these mineral rights on a unit basis, but I construe section 1248 of the Code of Civil Procedure differently from counsel on the other side, and I do not wish at this time to offer proof which may not be sustained after the proof has been admitted in the record.

(Testimony of Joseph Faria, Jr.)

I take it under section 1248 of the Code of Civil Procedure the interests of the lessors and the lessees must be valued separately. If we can agree on a valuation in its entirety, I do not think we will have much difficulty in allocation thereafter, but I do not wish to have the record or the trial proceed on a method of valuation which may not be in conformity with the statute.

The Court: You are seeking to elicit testimony as to the lessor's royalty separately and as to the——

Mr. Scampini: The lessee. [132]

The Court: The value of the mineral rights to the lessee?

Mr. Scampini: Yes, because, may it please the court, there is an obvious difference between a lessee's interest and a lessor's interest. One is only a matter of renting and the other has obligations to perform.

The Court: I think it should be admitted. The court will instruct in any event they cannot allow more for the lessor and the lessee's interests separately than their value would be for the whole.

Mr. Scampini: I think that is correct.

The Court: And we do have a little difference in the case of an alleged oil property than we do in the case of ordinary leases of real property.

Mr. Scampini: An oil and gas lease, as stated in the decisions of our Supreme Court, with which your Honor is undoubtedly familiar, is an interest in

(Testimony of Joseph Faria, Jr.)

real estate, and the lessee's interest is an interest that is deemed to be real property in this state, and I do not see how we can consistently value the lessor's and the lessee's interests together, as much as I would like to do so, and save a lot of time.

M. Bourquin: Any tenant's lease is real property.

Mr. Scampini: I respectfully disagree with counsel on the other side. I think in most cases leases have been held to be personal property, but not oil and gas leases.

Mr. Bourquin: Your Honor has ruled that this question may be answered, I understand. [134]

The Court: I think it would be proper for the witness to answer this question, and if it becomes appropriate at a later time and the matter goes to the jury for a valuation, it can be pointed out at that time if there is any valuation of these respective interests, there cannot be more awarded separately than there would be awarded if there were an award for the whole. I think the Supreme Court has pointed that out in some decisions.

Mr. Bourquin: I think so. Your Honor, the question seems to me to be academic. It is a position that has its effects under certain circumstances, and for that reason, your Honor, I will ask that the record note an exception to the ruling on that.

The Court: If it appears that at a later time there can be a valuation of the whole, and if there

(Testimony of Joseph Faria, Jr.)

is such valuation of the whole, then I can at such time instruct the jury to disregard this testimony; but upon counsel's statement that that is the way he wants to proceed now, he wishes to offer some testimony as to the values of the lessee's interest—what do you wish this witness to testify to now?

Mr. Scampini: The value of the lessee's interest. He is only a lessee, your Honor.

Mr. Bourquin: It seems to me it is like any undivided interest, your Honor. If we have several undivided interests in the property among several people, ordinarily we would not [134] give the court or the jury the problem of taking it piecemeal according to each undivided interest, and which would relieve the condemnor of any burden of having to analyze the matter and meet it in that fashion.

The Court: Of course, Mr. Bourquin, a proper standard, as you know, is what would a willing buyer pay to a willing seller who had a lessee's interest for that mineral right, and at the same time there might be a willing buyer who might offer a willing seller who had a lessor's interest a certain sum.

Mr. Bourquin: I can readily concede that, your Honor, but here we are not buying the lessor's interest without the lessee's interest. We are buying the whole. That is what we are buying.

Mr. Scampini: You are taking the whole.

Mr. Bourquin: No, we are buying it.

The Court: If you were taking the whole you

(Testimony of Joseph Faria, Jr.)

would be forcing both the lessor and the lessee to sell you their respective interests. That is condemnation. Wouldn't the value be what a willing buyer and a willing seller agree upon for those respective interests because they have been separated, although you should not be required to pay more than a willing buyer would pay a willing seller who had both the lessor and the lessee's interests in the land. It is a somewhat unusual question because of the fact that in oil transactions lessors and [135] lessee's interests are separately bought and sold, on a somewhat wide scale, as differentiated from the ordinary lease of a business property of some kind, where occasionally the lease is dealt in, but more frequently not.

Mr. Scampini: I might say, your Honor, in view of those stipulations which have now been read into the record, there is no other way we can proceed, because as to Mae Roche, Mary Faria, and Edward Faria, it is specifically provided that they reserve certain mineral rights under certain instruments.

The Court: Of course, if this is not real property, as you say, I doubt whether this witness would be a proper expert to say how much a willing buyer would pay for a lessee's interest.

Mr. Scampini: I am satisfied, your Honor, that the law will sustain my position that a lease for gas and oil exploration is real property under the law of the State of California. I have passed on many legal titles involving deeds of trust and

(Testimony of Joseph Faria, Jr.)

mortgages on gas leases, and I am satisfied that that is the law.

The Court: I will allow the question. Counsel may have an exception noted, and if the interests of justice require, we can reconsider the matter at a later stage in the trial.

Mr. Scampini: Perhaps in the course of this conversation the witness may have forgotten the question, so I will reframe [137] the question and again ask it.

Q. In respect to parcels 58 and 59, namely, the lease on the property of Mary Faria, which is parcel 59, and the lease on the property of Edward Faria, which is parcel 58, and which leases were on December 15, 1944, or on January 15, 1945, owned by Cal Bay Corporation, have you any opinion as to the value of that lease then owned by Cal Bay Corporation? A. Yes.

Q. The fair market value?

A. Yes, I have an opinion.

Q. What is your opinion? Just a moment, Mr. Faria. Did you make that memorandum that you were looking at? A. Yes.

The Court: What are you asking for? An amount of money?

Mr. Scampini: Yes.

The Court: State what it is, and then if he wants to give any reason for it, he can do so.

Q. How much was it worth?

A. Parcel 59, Mary Faris, 367 acres at \$1000 per acre, \$367,000.

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Scampini) When you say 367 acres, what does that represent?

A. That represents the property that Mary Faria owns.

Q. And which was taken by the plaintiff?

A. Yes.

The Court: This is just for the mineral rights he is speaking of.

Q. (By Mr. Scampini) You are just speaking of the lease, aren't you? A. Yes.

Q. The mineral rights under the lease?

A. Yes. [137]

Q. With respect to parcel 58 of Edward Faria, how many acres are involved in that parcel? 5 acres, isn't it?

A. Five acres.

Q. What do you consider the fair market value of the lease of Cal Bay Corporation to have been on January 15, 1945?

A. Well, that would be \$1000 an acre for the five acres, or \$5000 and——

Q. That is all now. Let me ask the next question.

Mr. Bourquin: Wait a minute.

Mr. Scampini: Pardon me?

Mr. Bourquin: I do not think counsel is entitled to cut off his own witness, your Honor.

The Court: Is there something you want to add to your answer? A. No.

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Scampini) In respect to parcel 57, which is the parcel of Mae E. Dutra, how many acres are involved in that parcel? A. 5 acres.

Q. And that lease was owned by Cal Bay Corporation, was it not? A. Yes.

Q. Have you any opinion as to the fair market value of the lease owned by Cal Bay Corporation on July 24, 1944, which is the date of taking of possession of that parcel, in respect of parcel 57?

A. Yes.

Q. What is your opinion?

A. \$5000 for that five acres. [138]

Q. How many acres of the Mary Faria lease were left to Cal Bay Corporation after the Government's taking under this action?

A. There was 208 acres left.

Q. Were the 208 acres the amount or the amount that was left?

A. The Navy took 218 acres less the amount from the 367 acres, which would make a balance of 249 acres.

Q. Have you any opinion as to whether or not the leasehold——

Mr. Bourquin: What did he say there, 367——

Mr. Scampini: 441, my figures are.

The Witness: Yes, 441.

Mr. Bourquin: If we are going to take these figures as any key to the amount of property that is involved, I do not think this witness has his arithmetic straightened up.

(Testimony of Joseph Faria, Jr.)

The Court: Let us not waste time, gentlemen, and take the time of the jury. These are matters that are not in dispute. Somebody state how much acreage there was. There is no dispute about it.

Mr. Scampini: I know what they are if I may ask leading questions.

The Court: Make a statment on this, will you, counsel, and let us move along? Make a statement of what the acreage is.

Q. (By Mr. Scampini) Mr. Faria, in the assignment of the lease that you made to Cal Bay Corporation you only assigned 367 acres of the 441, isn't that right?

A. That is right. [139]

Q. And you kept the other 73 acres for yourself? A. Yes.

Q. Of the 367 acres which you assigned the Government took 208 acres, is that right?

A. Yes.

Q. Which left 158 acres in Cal Bay which were not taken, isn't that right? A. Yes.

Q. Now, have you any opinion as to the damage suffered by Cal Bay Corporation in respect to the 158 acres left to it as the result of the Government taking of the 208 acres? A. Yes.

Q. What is your opinion, or what is the damage in your opinion? A. \$61,000—

Q. I am asking you what is it? \$61,000?

A. \$61,000.

Q. Now, going to the Joseph Faria leases which

(Testimony of Joseph Faria, Jr.)

you retained, and particularly to the Mary Faria, where you retained 73 acres, in that 73 acres the Government took approximately 10 acres, isn't that right? A. Yes.

Q. Have you any opinion as to the fair market value of the 10 acres taken from you in parcel 59 as of January 15, 1945?

A. Yes. You mean the value of the 10 acres?

Q. Of the 10 acres.

A. \$375 per acre, or \$3750.

Q. In respect to the Geraldine Faria lease of 228 acres, which was retained by you, the Government took practically nothing of that, is that right?

A. Yes.

Q. Just a slight corner of about a half an acre, is that right? A. Yes.

Q. But in respect to the Bollman lease, parcel 3-A, the amount [140] of acreage held by you on the lease aggregated 566 acres more or less, and of that 566 acres the Government took 512 acres, or thereabouts, and left 53 acres, is that right?

A. Yes.

Q. Have you any opinion as to the fair market value of the lease owned by you on July 24th in respect to the 512 acres of land taken by the Government in the Bollman lease, parcel 3-A?

A. Yes.

Mr. Bourquin: May I interrupt? Your Honor, yesterday we offered to accept this Bollman claim, but after that counsel put Mr. Bollman on and he has raised a question as to the validity of that lease

(Testimony of Joseph Faria, Jr.)

in this record. That therefore compels me, in my capacity here, merely serving the Government, to enter an objection. You asked him to evaluate the property which was initially subject to the Bollman lease, as described by the question. That is irrelevant and immaterial upon the ground that according to the testimony here the lease appears to have expired or to have lapsed before the taking.

The Court: I suppose upon the theory that it is an agreement that is required to be in writing?

Mr. Bourquin: Yes, it would be, your Honor.

Mr. Scampini: I respectfully submit, if it please the Court, that an extension of the lease for which a consideration has been paid and received can be oral as well as in writing.

The Court: The witness Bollman testified that he got the [141] 100 shares for his trouble that he went to in going to see a lawyer, and other things, as I remember his testimony. This witness testified he gave him the 100 shares for a renewal of the lease.

Mr. Scampini: That is right.

The Court: If the parties are unable to agree as to the terms of the oral agreement, I do not know whether there would be something substantial enough to go to this jury. You say there is authority to the effect that a lease required to be in writing may be renewed by an executed oral agreement?

Mr. Scampini: Yes, your Honor.

The Court: Have you authority for that?

Testimony of Hon. John P. Jones, D.C.

Mr. SUMNER: May I say this, I do not wish to evade counsel's point at all, but I am prepared to say that there has always been a question in my own mind as to the legal effect of this anti-slavery amendment, and I assumed as the Government has only taken the name of what we consider to be a mineral land in the 502 acres, rather than to have a ruling which may be accepted or by counsel on the other side and thereafter appealed upon in the event he is not satisfied with the verdict or we appeal, in the event we are not satisfied with the verdict, I am prepared to accept your Honor's ruling on the subject matter.

Mr. HARRISON: I will say in response to that that had counsel only asked the stipulation when it was offered to him and saved time and not put the case to the trial, we would [LAW] not have the question in fact.

Mr. SUMNER: I never asked questions of Mr. Holliman when I received the stipulation. I and I had no questions, but they were necessary to question him.

Mr. HARRISON: Before Holliman was ever called to the stand we did not go around saying that.

Mr. SUMNER: Under the circumstances I do not see why you should have done so.

Mr. HARRISON: That does not compel us to. I do not know any citizen who has any right to waive any State's rights, but I am aware of the duty of ruling that the anti-slavery amendment of the Government has any right to waive the Govern-

(Testimony of Joseph Faria, Jr.)

ment's rights, and that is the position you put me in when you declined to accept the stipulation and put Mr. Bollman on the stand.

The Court: What is the state of the record now? You have objected to the testimony of the witness on the ground that there was no lease?

Mr. Bourquin: Yes, your Honor. The lease had lapsed.

The Court: I will sustain the objection at this point.

Q. (By Mr. Scampini): With respect to the lease of Joe Chavez on 414 acres of land, Mr. Faria, the Government in its complaint took 177 acres described as parcel 71, isn't that right? A. Yes.

Q. Have you any opinion as to the fair market value of the lease [143] owned by you on July 24, 1944, in respect to the 177 acres taken by the Government? A. Yes.

Q. What is your opinion? A. \$100.

Q. Now, the lease of the Joe Chavez property lies immediately adjoining, does it not, the well which was drilled by the Standard Oil Company, known as the Keller well? A. Yes.

Q. Have you any opinion as to what bearing the Keller well abandonment had on that lease?

Mr. Bourquin: I will object to that on the ground it is incompetent. Counsel offered the man to prove market value. If he is so insecure about his values that he needs to have his witness badgered with such questions as that?

(Testimony of Joseph Faria, Jr.)

The Court: I think the question is incompetent. I will sustain the objection.

Q. (By Mr. Scampini): Going back to the Mary Faria lease of 73 acres owned by you, 63 acres remained after the Government took 10 acres, isn't that right? A. Yes.

Q. Have you any opinion as to the damage, if any, suffered by the 63 acres retained by you by reason of the Government taking of the rest of the property? A. Yes.

Q. What is that damage? A. \$3750.

Q. With respect to the Geraldine Faria lease of 228 acres, of which no part was taken by the Government, have you any opinion as to the damage suffered by that lease retained by you by reason of the Government taking the rest of the property, leases in [144] that vicinity? A. Yes.

Mr. Bourquin: I object to that as irrelevant and immaterial. If no part was taken it follows under the rule there is no severance.

Mr. Scampini: There was a half acre taken, your Honor, and it is part of a unit, a unitary development as shown by the leases in evidence.

The Court: Yes, but you have to show the part taken caused the damage to the part from which it was taken. In other words, the damage arises out of the taking of the part.

Mr. Bourquin: I understood you to say that no part was taken. You must have said that inadvertently.

Mr. Scampini: I must have done so, because .63 of an acre was taken.

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: We will withdraw the objection, your Honor, if there was any taken.

The Court: You had better reframe your question.

Mr. Scampini: Yes, your Honor.

Q. In respect to the Geraldine Faria lease of 228.55 acres of land, of which the Government took .65 acres, have you any opinion as to the damage caused to the remainder of the leasehold estate by reason of the Government's taking? A. Yes.

Q. What is your opinion? A. \$44,000.

Mr. Bourquin: How many acres in all are there in the Geraldine Faria piece? [145]

Mr. Scampini: 228.55 acres, of which the Government took .65. I think I am about through with this witness, your Honor. May we ask for the usual recess at this time?

The Court: We will take the afternoon recess at this time, ladies and gentlemen. Please bear in mind the admonition of the court. [145-a]

JOSEPH FARIA, JR.

recalled on behalf of defendants.

Direct Examination

(Resumed)

Mr. Scampini: May it please the Court, I have only two questions. One of them is the result of an error which I made myself in the asking of the question that I desire to have corrected.

(Testimony of Joseph Faria, Jr.)

Q. Mr. Faria, referring to the Geraldine Faria lease, rather than the Mary Faria lease, Parcel 59 retained by you, 73 acres of that lease was retained by you; isn't that right?

A. That's right.

Q. Of the 73 acres, how many acres were taken by the Government? A. 63 acres.

Q. When I asked you the question before recess, I asked you the question as to whether or not it was not true that it was ten acres? A. Yes.

Q. Of the 63 acres taken by the Government, have you an opinion as to the fair market value of those 63 acres? A. Yes.

Q. What is your opinion?

A. \$375 an acre, or \$23,625.

Q. Have you any knowledge as to the exact amount of money spent by Cal Bay Corporation, by that I mean personal knowledge, for materials and labor and supplies furnished in the course of drilling the Faria Well No. 1 on Parcel 59?

Mr. Bourquin: To which we will object, your Honor, as immaterial, and irrelevant, and no criterion of the market [146] value of the property taken.

Mr. Scampini: I respectfully submit that the fact a well exists on property is one of the material considerations in determining the market value of an oil and gas lease between a willing buyer and a willing seller in full possession and knowledge of

(Testimony of Joseph Faria, Jr.)

all the facts and circumstances appertaining to same. I don't see how you could separate the hole from the structure.

The Court: The cost is never a criterion in determining—it is always market value.

Mr. Scampini: Have I not the right to prove, if I can, that it is a reasonable cost, by other witnesses experienced in the cost of drilling a well?

The Court: Well, the witness may testify as an expert on the subject as to what the reasonable cost of putting in a well of this kind is, but this particular point is immaterial, because it may have been done providently or improvidently or expensively or cheaply. Those are factors that are not proper in determining the cost. You may show from different witnesses such matters but——

Mr. Scampini: I will reframe the question.

The Court: I don't know whether this witness is qualified. I say that in advance to your asking the question.

Q. (By Mr. Scampini): Have you drilled any oil wells, Mr. Faria?

A. Have I drilled any oil wells? [147]

Q. For your own account?

A. I haven't drilled any wells myself, but I have paid others to drill wells for me. I had Mr. Gibson drill a well for me, my partner.

Q. How many wells have you had drilled for your account? A. Five.

Q. You paid for the cost of those five wells?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. Is that in the last two or three years?

A. The last couple of years.

Mr. Scampini: I think that he is qualified.

The Court: Well, Counsel, I think you have to have someone who can testify as to what the reasonable cost of drilling this well is who must be competent in that business. I will sustain the objection.

Mr. Scampini: Will the record show an exception, your Honor? You may take the witness.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Faria, before going to other phases of the matter, let me ask concerning the testimony you have given as to valuations and damage for properties not taken. Calling your attention to Geraldine Faria's piece, let's see, that lies on this map, if it is on the compass, north of the Maria Faria piece, joins with the Lena McKeen piece, joins with the Bollman piece, that is correct, isn't it? Mrs. Geraldine Faria's 64? A. Yes.

Q. Mary Faria, about there. To the southwest, it joins Lena [148] McKeen just to the south, kind of at the corner? A. Yes.

Q. Ralph Bollman, joins it on the southeast; that is correct? A. Yes.

Q. You said, and it is a fact, that Geraldine Faria's piece amounted to 228.55 acres before this taking; that is correct, isn't it?

A. That's right, yes.

(Testimony of Joseph Faria, Jr.)

Q. The Government in its taking here, took away from her acreage .65 of an acre, a little more than half an acre? A. Yes.

Q. You are valuing her property as on July 24, 1944? A. That's right.

Q. How much, in your opinion, was the market value of Geraldine's 228-acre piece just before the Government took away the .65 of an acre?

A. \$66,000.

Q. \$66,000. That is what her 228.55 acres were worth in the market, in your opinion, on July 24, 1944; is that correct? A. That's right.

Q. How much was her 228½ acres less the half-acre—the 228 acres after that, how much was the market value of that immediately after the Government had established its suit and its order of possession in effect on July 24, 1944?

A. \$44,000.

Q. In other words, then if we put it in the terms we use in condemnation suits, we would conclude from your figures that, in your opinion, her 228½ acres had been severed, or severance [149] damage, by the taking of the half-acre to the extent of approximately \$22,000? A. For the reason—

Q. Well, I am just asking you?

A. No, the whole was.

Q. Let me ask you, when you have given us, as you have given it, the conclusion her damage, severance damage, have you done it on the basis of the separation from her of the half-acre, that taking, or have you done it on the basis of some effect of

(Testimony of Joseph Faria, Jr.)

the whole Government taking over there on this project including that half-acre from her?

A. Yes.

Mr. Bourquin: Then, your Honor, we will move that that figure of his be stricken as not the proper representation of severance damages on the ground severance, I believe severance means, is recognized by law as the value of the whole piece less the value of the piece of an owner that was taken. I will put it the other way.

The Court: That is not quite right.

Mr. Bourquin: Severance is the difference between the value of the whole piece and the value of the remaining piece after a partition, before and after the taking and by virtue of the taking of her own property.

The Court: Well, simply stated, you mean that if a person has 600 acres and the Government takes 200 of the 600 acres, the Government has to pay for the 200 acres and if by the taking of that there was a resulting damage because of the severance to the 400 acres, the Government also has to pay the [150] amount of that damage?

Mr. Bourquin: Yes, your Honor.

The Court: That is severance damage. You are contending here this witness has testified that the severance damage does not arise by virtue of the cutting off of a part of this lady's property from another part, but arises because of the taking of a larger area of which this piece that was taken is only a part; therefore, that is not a basis of

(Testimony of Joseph Faria, Jr.)

valuing severance damage. What have you to say?

Mr. Scampini: My contention and the contention of my associate is to the effect these leases were held and owned by Cal Bay Corporation as a unit and considered as a unit in the development of the entire structure and the value resulting to the Geraldine Faria piece is affected just as violently by the Government's taking of the Mary Faria property, including the well as the Mary Faria property.

The Court: There is no authority that I know of that justifies the award of severance damages unless a part of the same owner's property is taken. It arises by virtue of that and not by some other taking.

Mr. Scampini: This is part of the same owner's property. This is not the property of Cal Bay Corporation. These leases were owned by Cal Bay. We are not interested in Mary Faria in this respect. The lease did not include merely the lease of Geraldine Faria, but includes the lease of Mary Faria—— [151]

Mr. Bourquin: I understood it was to establish a value of the Geraldine Faria property. With the question that counsel raises, they raised a question for us, I am willing to reserve the question if your Honor would like to do so for later determination. I understood it was to show Geraldine's piece was worth so much before the half-acre taken and so much after.

The Court: Yes.

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: I understood him to say on direct examination the damage was \$44,000 and on cross-examination he said it was \$22,000.

Mr. Scampini: I think he probably made a mistake.

Mr. Bourquin: Well, we can pass that, your Honor.

The Court: All right.

Q. (By Mr. Bourquin): Mr. Faria, in giving these various figures on valuations, you have a memorandum that you have used and by which you were able to tell us of the figures; is that correct?

A. Yes.

Q. That is correct? A. Yes.

Q. Are those your calculations? A. Yes.

Q. Made by yourself, alone? A. Yes.

Q. Do you have your log with you?

A. Yes; it is right here.

Q. You testified that on November 29, 1944, the well, you said, blew in. Will you look at the log for November 29, [152] 1944, and tell me if that is the expression recorded on the log, "blew in?"

A. It says it blew out.

Q. It says "blew out" in the log. That log is prepared by the men participating in the operations of the sinking of the well, was it?

A. Yes.

Q. You did not prepare it? A. No.

Q. I think you testified that you were there frequently and sometimes there were days you weren't there at all? A. That's right.

(Testimony of Joseph Paris, Jr.)

Q. Have you ever had any experience in oil and gas interests or explorations prior to the time that you referred to you took a part in an exploration at Santa Cruz? A. Not prior to that.

Q. When was that? A. In 1939.

Q. 1939. Prior to that time, had you ever been a rigger or driller or done any manual work around oil or gas explorations? A. No.

Q. Have you ever done any work of a rigger or driller or manual worker around a gas or oil exploration? A. No.

Q. Never have. Have you ever participated in it in any way?

A. Only with the little work I did around this well here.

Q. Only the little work you did around the well here? A. And the one in Santa Cruz.

Q. And the one in Santa Cruz. Did you ever accept a regular role on that crew on this well in the course of exploration [153] in 1943 or 1944?

A. I don't quite understand what you mean.

Q. Do you know what the membership of an exploration crew or drilling crew consists of?

A. Yes, three shifts.

Q. Do you know what each shift consists of?

A. Around six or seven men.

Q. Do you know what the function or assignment of each man is?

A. The driller keeps a record of what goes on. He has to keep a log for the well of everything that

(Testimony of Joseph Faria, Jr.)

is carried on, because it is kept for a record for the Division of Oil and Gas of the State. We have to have a record of that well.

Mr. Bourquin: We will ask that answer stand out as not responsive.

The Court: Yes.

Mr. Bourquin: May I have the question read, Mr. Gagan?

The Court: He wants to know what each man in the crew does.

A. (By the Witness): Each man's job, well, the driller is—the head driller, he does the drilling, he takes care of the parts, the machinery that drills the hole. Then the derrick man. That derrick man, he is on top himself, he takes care of the drill pipe when it comes up, when they pull out of the well they come back down in the hole, he takes care of that. There are men who handle the tongs, they have to handle these tongs, fasten them onto the drill pipe as it is coming [154] out, either to tighten it or loosen it.

Q. What are they known as, the men who handle the tongs?

A. Well, we call them roughnecks.

Q. You call them roughnecks, the men who handle the tongs? A. Yes.

Q. What others? A. Cathead.

Q. Any others?

A. There is a drilling superintendent and the fireman.

Q. Did you ever assume any of those assign-

(Testimony of Joseph Faria, Jr.)

ments in the exploration of this well, either in 1943 or 1944?

A. I don't know what you mean. I don't quite get you.

The Court: He means, did you ever regularly perform the duties of any one of these men that you describe?

A. (By the Witness): No, I did not.

Q. (By Mr. Bourquin): Did you ever do that on the Santa Cruz exploration? A. No.

Q. So that you never did assume a regular role?

A. No.

Q. In the exploration of any oil or gas property?

A. That's right.

Q. You said that you had some interest in oil or gas properties, I believe you said oil, down near Bakersfield? A. Yes.

Q. When did you first acquire any interest in oil or gas there?

A. I acquired this in Maricopa in 1944.

Q. After the Faria exploration had been together and run [155] along in 1943? A. Yes.

Q. Did you ever acquire any other oil or gas interest prior to that time?

A. No; only the one in Santa Cruz.

Q. What about that one in Santa Cruz, what result did you get down there?

A. Well, there was only a shallow well.

Q. What was the result?

(Testimony of Joseph Faria, Jr.)

A. We got a showing; we didn't care to spend any more money and then we quit it, abandoned it.

Q. Was it a dry hole, in the parlance of oil and gas developments?

A. I don't consider it a dry hole.

Q. Did it develop any commercial quantity?

A. No.

Q. What do you call a dry hole yourself?

A. A dry hole is when you make a fair test by going through all the formations that is required to disprove a field, that there is nothing by going any deeper as recommended by geologists, by the reading in the geological column; if there is no further drilling, it is a dry hole, or there isn't anything worth while, there isn't anything on it.

Q. If there isn't anything worth while, it is a dry hole?

A. No. You drill the property to the depth as recommended and no further drilling, that is considered a dry hole.

Q. If you get any token quantities of oil or gas, would you say that was not a dry hole?

A. I would say it is not a dry hole, no, because we did not get an oil showing. [156]

Q. In your view of the matter, a hole is not a dry hole if you get any oil or gas showing at all?

A. Right.

Q. Irrespective of the question of whether quantities sufficient to repay the investment, the cost of development?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. Mr. Faria, what has been your own business?

A. My own business?

Q. Yes.

A. I have been farmer and a farm contractor and my own farm and own these oil wells, producing oil wells, in Maricopa. [156-a]

Q. You told us your first connection with any oil wells was in 1939 in Santa Cruz?

A. That is right.

Q. And your next connection with any, except you were raised and lived near this exploration here, was in 1944, when you acquired some interest near Bakersfield?

A. That is right.

Q. What have you done otherwise?

Mr. Scampini asks if he may interrupt.

Mr. Scampini: If it please the court, I have a witness here who is being detained. I was wondering if we are going on on Monday, so I might advise him.

The Court: What was that?

Mr. Scampini: I was wondering whether you intended to proceed on Monday, because I have a witness who wishes to leave, and is now waiting here.

The Court: We are going ahead tomorrow.

Mr. Scampini: Yes, I know.

The Court: You were inquiring as to whether we will proceed Monday or Tuesday?

Mr. Scampini: Yes.

The Court: Tuesday.

Mr. Scampini: Thank you, your Honor.

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Bourquin): How old are you, Mr. Faria? A. 47.

Q. Your business, you said, has been farming and farm contractor? A. Yes.

Q. Does that continue to be the business that you carry on? [157] You operate a farm of your own?

A. Yes.

Q. Do you still do farm contracting?

A. I do not do very much of it any more.

Q. When did you last do any farm contracting?

A. About two years—three years ago.

Q. What type of contracting did you do?

A. Using farm machinery and going out and doing work for the various farmers, like hay baling, threshing.

Q. Hay baling and threshing?

A. Tractors and so forth.

Q. When did you organize the Cal Bay Corporation? A. April 17, 1942.

Q. Who is the president? A. Myself.

Q. What are the other officers?

A. John Knox, Russell Gwinn, W. W. Morgans, and Esther L. Faria.

Q. Who is Esther L. Faria? A. My wife.

Q. You took those leases on this property of your aunt, is that correct? A. Yes.

Q. Mary is your aunt? A. Yes.

Q. Is Geraldine a connection of yours?

A. She is my mother.

Q. Geraldine is your mother? A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. As to the other people involved here now, are you connected with the Alvernaz people?

A. Alvernaz—he is no relation of mine, just a neighbor.

Q. Oh, just a neighbor? A. Yes.

Q. Have you other relatives in the picture besides your mother [158] and your aunt?

A. That is it.

Q. That is all?

A. Yes. Eddie Faria and Mac Roche, who is a cousin.

Q. Mac Roche and Eddie Faria are cousins?

A. Yes.

Q. Who have these parcels of 5-acre pieces here?

A. That is right.

Q. Is the John S. Faria, who adjoins parcel 59 here, and who adjoins parcel 57, a connection of yours? A. No.

Q. No connection of yours? A. No.

Q. Did you have a lease on the John S. Faria piece? A. No.

Q. In other words, so we will know now, this piece that is marked No. 56, which I shall outline in red, and lies up against parcel 59 on the southwest, and also against parcel 57, the little piece in there, you obtained no lease on? A. No, sir.

Q. You knew, did you not, that John S. Faria never claimed there was any oil or gas value in the property?

A. I don't know what John Faria thought.

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Bourquin): How old are you, Mr. Faria? A. 47.

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Q. Mae Roche and Eddie Faria are cousins?

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A. I don't know what John Faria thought.

(Testimony of Joseph Faria, Jr.)

Q. You never concerned yourself with that. Although the property lay alongside of the parcel 59 that you feel has such possibilities?

A. I would not say so. I just didn't care for that property, and that is the reason I never bothered with it.

Q. Was there any property lying between the property of John S. Faria and the property of Mary Faria, which is the subject of your lease, the Cal Bay lease?

A. No, that is all, and [159] then the next property would be——

Mr. Scampini: Will you speak a little louder, Mr. Faria? We cannot hear you over here.

The Witness: There isn't any property lying between Mary Faria and John Faria, outside of what Ed Faria and Mae Roche own in there.

Q. (By Mr. Bourquin): In other words, so that we will be clear, parcel 59 is that parcel which I will now outline in this fashion, along here, is that correct? A. Yes.

Q. Marked 59 here, and there is that much of it in the taking that is shown within the limits of the fence shown with this heavy line? A. Yes.

Q. In the parcel 59, or really cut out of it in the southwest corner there are two little pieces, five acres each, 57 and 58, one of which belongs to your cousin, Mrs. Roche, and the other of which belongs to your cousin, Ed Faria? A. Yes.

Q. Now, the property of John Faria is divided

(Testimony of Joseph Faria, Jr.)

from the parcel 59 and 57 only by a fence line, is that true? A. That is right.

Q. You knew that John Faria had settled for his property taken here without any claim of oil and gas?

Mr. Scampini: We object to that as incompetent, irrelevant, and immaterial, and not within the issues of the case, not within the proper scope of the direct examination.

The Court: I will overrule the objection.

Q. (By Mr. Bourquin): You knew that, didn't you, Mr. Faria? [160]

A. I knew that his property there was divided by that fence, separation of the fence.

Q. You knew he settled with the Government and reached an agreement upon the value of his property without any claim of oil or gas interest in it?

A. Well, that I don't know. I don't know what he did, what his transaction was with the Government.

Q. You never heard of that?

A. I know it was taken, but I don't know what kind of a settlement he got, or how it was handled.

Q. You never concerned yourself as to whether John Faria thought there was any oil or gas in that locality?

A. That I don't know. I wasn't interested at all in that piece of property.

Q. Did you ever concern yourself with that question? A. I don't like the property.

(Testimony of Joseph Faria, Jr.)

Mr. Bourquin: I will move that the answer be stricken as not responsive and ask, if I may repeat, the question again.

Q. Did you ever concern yourself with the question of whether John Faria held any gas or oil claims in his land?

A. That I don't know whether he did, or not. I know, myself, I didn't feel that the property was—I didn't think it was good enough to lease. That is why I didn't lease it. I didn't even bother asking him for a lease.

Q. In other words, in your opinion, you felt the property on the one side of the imaginary line dividing Mary Faria and John Faria was one thing and the property on the other side [161] of that line was something else?

A. Yes.

Q. Coming back to this company which you say you organized on April 17, 1942, you had taken the leases, you and Bud Hildebrand, the earlier years, had you?

A. In 1941, yes.

Q. You and Bud Hildebrand leased in 1941?

A. That is right.

Q. You say that gentleman is deceased, is he?

A. Yes.

Q. Those leases taken in your name and his name were assigned by Bud Hildebrand to you the very same day they were executed from the lessors to you, were they?

A. Not the same day, no.

Q. Do you know that to be the fact, that the

(Testimony of Joseph Faria, Jr.)

assignments are not dated the same day that the leases are dated?

A. No, he assigned this property to me after we had everything leased on that particular area. I don't know just how much time afterwards, but sometime afterwards.

Mr. Bourquin: Perhaps we can stipulate to that, counsel. Are the assignments differently dated?

Mr. Scampini: I do not know. I was looking for the lease. The Mary Faria lease is dated August 11, 1941.

Mr. Bourquin: When was it assigned, please?

Mr. Scampini: The date of the assignment from Hildebrand is February 21, 1942.

Mr. Bourquin: February 21, 1942.

Q. Hildebrand assigned all to you before you incorporated the Cal Bay Corporation, did he?

A. Yes. [162]

Q. You left the impression with me this morning that your next step after incorporation was to have the property explored and obtained geological advice.

A. Yes.

Q. When was it that you employed Mr. Norris to explore the property or to analyze the property?

A. It was in 1942. If I remember right, it was in March, I think, of 1942.

Q. March of 1942? Are you sure? Didn't you obtain your leases and incorporate your company before you ever consulted a geologist, at all?

A. No, sir.

(Testimony of Joseph Faria, Jr.)

Q. Can you give me the date of the geologist's report to you, please, Mr. Faria?

A. Well, the date of the report was April 29th.

Q. April 29th was the date of the report, 1942. In other words, you had no report from the geologist at the time you incorporated, did you?

A. We had no—he had given me his favorable opinion on it, and I don't know whether I got a preliminary report or not.

Q. Will you look and see if you have any report, a written report from Mr. Norris prior to the time that you filed your articles of incorporation on April 17, 1942?

A. I would have to ask Mr. Norris that question.

Q. In other words, you would not know whether you have such a record of anything, or not?

A. I wouldn't.

Mr. Bourquin: That is the fact, isn't it, counsel?

Mr. Sampson: I beg your pardon? [183]

Q. (To Mr. Bourquin): Isn't it a fact that Mr. Norris never made any written report on the property until after Mr. Faria had incorporated his company?

Mr. Sampson: The first written report was April 29, 1942. There were, however, many consultations prior to April 29, 1942.

Q. (To Mr. Bourquin): When did you employ Norris? A. In 1942, in March.

Q. Have you a record of that?

A. No, I have not, only I gave him what I paid him, that is all.

(Testimony of Joseph Faria, Jr.)

Q. Have you a record of when you paid him and what you paid him?

A. Well, I guess I could find it.

Q. Would you look for that overnight, please?

A. I would have to go to Brentwood to look for it.

Q. Perhaps your counsel has it. Have you delivered your records to your counsel in this matter?

Mr. Scamporrì: Counsel, may I say Mr. Norris is in court. Maybe he has the records.

Mr. Bourquin: I want to examine Mr. Faria, your Honor, and Mr. Norris, in their turn.

The Court: You can introduce the records that counsel asks for.

Q. (By Mr. Bourquin): When did you seek to obtain a permit to sell stock?

A. It was after Norris gave us the report.

Q. What did you do with the Norris report when you received it? [164]

A. I had a copy of it for myself and my board of directors, and the other one was given to the Division of Corporations of Sacramento.

Q. In other words, when you obtained his report you submitted a copy of it to the Corporation Commissioner? A. Yes.

Q. In Sacramento, upon which to base an application for a permit to issue and sell stock, is that true? A. Yes.

Q. Do you remember when that was done?

A. No, I don't remember the dates.

(Testimony of Joseph Faria, Jr.)

Q. You do not remember when you made your application to the commission?

A. No, I do not.

Q. Was it May 11, 1942?

A. It probably was. I don't know.

Q. And *Mrs. Norris*' report had been filed at the commission before that? A. Yes.

Q. Then thereafter a permit was granted you, you testified, to issue 62,500 shares of the stock to yourself, is that correct? A. Yes.

Q. 62,500 shares of the stock to yourself?

A. Yes.

Q. Were the 62,500 shares of stock released to you? A. No.

Q. Have they ever been released to you?

A. No.

Q. In other words, in that permit were they issued to be deposited in escrow and released when the Corporation Commission deemed it proper?

A. Yes.

Q. None of that 62,500 shares of stock has ever been released to you? A. No. [165]

Q. It is in escrow. When you gave Mr. Bollman 100 shares of the stock, that was not of your own stock, then, was it?

A. No, I had to put up the money for the stock, of this Cal Bay stock. I put up the \$100 myself for it.

Q. Whom did you put it up with?

A. The Cal Bay Corporation.

Q. Whom did you give it to?

(Testimony of Joseph Faria, Jr.)

A. The Secretary-treasurer.

Q. Who was that? A. Russell Gwinn.

Q. Russell Gwinn? A. Yes.

Q. Who is Russell Gwinn?

A. He is the Secretary-treasurer of the Cal Bay Corporation.

Q. And he lives where, please?

A. Stockton.

Q. What is his business?

A. Insurance man.

Q. Where does the other man you mentioned, John Knox, live, and what is his business, the other officer and director?

A. He is in Stockton and his business is the feed business. He is a feed merchant.

Q. A feed merchant? A. Yes.

Q. The directors consist of you, those two gentlemen, and your wife?

A. And W. W. Morgans.

Q. Where does he live and what does he do?

A. Well, he lived—at that time he lived in Brentwood. He was a merchant.

Q. What type of merchandise did he deal in?

A. Dry goods and groceries, and he also had a farm.

Q. By the way, when this stock was issued, the 62,500 shares, a permit was given the corporation to sell that amount of stock; who sold it?

A. I hired Percy King as an agent in Stockton, and Joe Biallis sold some of it, and there was another agent here in Oakland that sold some of it,

(Testimony of Joseph Farin, Jr.)

and I had an agent's license and sold some, myself.

Q. Who, if anyone, was registered with the Commissioner of Corporations as agent for the sale and distribution of that stock?

A. Percy King, myself, and Joe Ballin.

Q. Was anyone designated as agent with the Corporation Commissioner except yourself?

A. Well, I hired them——

Mr. Scamporrini: I rise to object on the ground the records of the Corporation Commissioner are the best evidence, if the Court please, and further, on the ground it is not within the scope of the direct examination. I have the permits here, if you wish to offer them.

Mr. Bourquin: We are examining the interest of the witness in the matter, your Honor. The witness is an interested party.

The Court: I think the question is proper. If he knows he can say whether he was the agent who was designated or not. I will overrule the objection.

Q. (By Mr. Bourquin): Will you answer the question? Were you not the only person designated as agent to the Corporation Commissioner for the sale of that stock? A. No.

Q. You say no. Did you sell that stock?

A. I sold some of it, yes.

Q. Did you derive commissions from the sale of the stock? A. Yes. [165]

Q. Did you receive thirteen thousand and some odd dollars for the sale of the stock in 1943?

(Testimony of Joseph Parn, Jr.)

A. I don't know. I don't remember how much I received. I received some money from the sale of the stock.

Q. What commission did you charge?

A. 20 percent.

Q. 20 percent. That was all the Corporation Commissioner allowed, wasn't it?

A. That is right.

Q. You say you do not know whether you received between nineteen and twenty thousand dollars in commissions from the sale of the stock in 1944?

A. I recall just—I don't remember how much I received.

Q. Was it that much, or more?

A. That I don't know.

Q. You have no idea?

A. No, I have not. I would have to get that from the Secretary-treasurer.

Q. The Secretary-treasurer, in other words, you would not have any record of your own?

A. No, I haven't any record of my own—yes, I might find the record of it in my books at home.

Q. Did you receive between nine and ten thousand dollars in commissions for the sale of the stock of the corporation in 1944?

A. Yes—I would say yes, I received that much, yes, sir.

Q. In other words, you did derive in commissions from the sale of this stock sold of the corporation

(Testimony of Joseph Faria, Jr.)

tion approximately \$30,000 in those two years, did you, 1943 and 1944?

A. I wouldn't say to that. I don't know whether I received that much money, or not. [168]

Q. You know what you made in 1944 but you do not know what you made in 1943, is that true?

A. I don't know what I made in any of the years definitely down to the figures. I couldn't give you the exact amount.

Q. Is that approximately right?

A. I wouldn't say. I don't know.

Q. Will you check that?

A. Yes, I will check it.

Q. We want to know. Did you derive any other income from this company engaged in exploration except the commissions from the sale of stock?

A. I owned the drilling equipment, and I received a rental for the use of the equipment.

Q. In other words, you owned the equipment, and you rented it to the Cal Bay Corporation, is that true? A. Yes, that is right.

Q. Did they pay you approximately \$10,000 to rent it for a period of three months that it was employed in 1943?

A. They paid some of the money, but still they owe me—I lent money, I helped them along, and I didn't get all the rents from them, and I advanced about—I can get the exact amount—I guess I have it here—I advanced \$34,657.77. That includes rents, money, and things I had to buy for the company.

(Testimony of Joseph Faria, Jr.)

Q. Did you receive any rentals for the equipment for the year 1943?

A. I don't remember the amount, but I received some, some rent.

Q. Was it about that?

A. Well, I couldn't say. [169]

A. Well, I charged them \$100 a day.

Q. \$100 a day?

A. Yes, for the rental of the equipment.

Q. And for 90 days or 100 days that would be just about \$10,000, wouldn't it? A. Yes.

Q. The pictures of the rig and other features that were offered and shown to the jury this morning were taken in 1944, is that correct?

A. Yes.

Q. By, you said, Mr. McBride? A. Yes.

Q. Is he a photographer? A. Yes.

Q. He was not a man working on any of the crews engaged in the drilling of the well?

A. No.

Q. Did you have a McBride working on any of the crews in the drilling of the well in 1944?

A. Yes.

Q. Another McBride? A. His brother.

Q. Oh, it was his brother, was it? You said, Mr. Faria, that in the course of the exploration in 1943 at a certain depth a large amount of gas was encountered, is that correct? A. Yes.

Q. About September 24th, you said.

A. This was in October.

Q. Have you the log with you again?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. Will you look and see if any gas was encountered on September 24th and tell us in what terms it was described on the log?

A. On September what?

Q. 24, 1943.

A. On September 24th, "Sample on the shaker screen cut oil, the gas cutting the mud."

Q. May I see your log in that respect, please? On that day, [170] then, September 24, 1943, at a depth of 4268 or 77 feet, the gas was cutting the mud, is that true?

A. That is not the depth there, I don't think.

Q. What is the depth?

A. The depth is from 4236 to 4255.

Q. 4236 to 4255? A. Yes.

Q. You are looking at the second tour. I am looking at the third tour.

A. Oh, yes, this over here (indicating). It would be 4255 to 4268, that is right.

Q. Let me read it and see if it is right.

"4255-4268. Heavy shale, brown. 4268-4275, sand; 4275-4277, brown shale, lots of gas, sample on shaker screen cut oil, gas cutting the mud."

Is that correct? A. Yes.

Q. Are you sufficiently familiar with that log to tell us what operation the men there were engaged in the next five days?

A. Well, Schlumbergers were taken and forma-

Q. And when you were there on the time in question you saw the well surging; what did you see?

A. I saw the mud would at times - it would throw the mud over the top of the rotary table instead of going out through the outlet to the ditch, the pipe below. There is an outlet about three or four feet below that the mud—that runs into the mud ditch.

Q. It wouldn't flow out in the stream intended, but it would blow out to the rotary table?

A. Blow out over the rotary table.

Q. It would blow out over the rotary table?

A. That is right.

Q. Is it correct that the condition there encountered was such that the crews consumed the next five days in circulating to kill the gas?

(Testimony of Joseph Faria, Jr.)

tion tests, and we had to build up our mud weight by the Baroid people, and we to a Schlumberger.

Q. You testified on your direct examination that you were there at that time, were you?

A. Yes.

Q. And that you saw the well was surging and the mud was kicking up over the rotary table?

A. Yes.

Q. What is the rotary table?

A. The rotary table is the table that turns the drill pipe.

Q. And stands at the top of the drill pipe?

A. It stands on [171] the derrick floor.

Q. It stands on the derrick floor?

A. Yes.

(Testimony of Joseph Faria, Jr.)

A. I don't remember how many days they circulated, but they did have to build the mud up and circulate heavier mud.

Q. You filed a summary that you signed and filed with the Division of Oil and Gas on this exploration, didn't you? A. Yes.

Q. Who was it prepared by?

A. By our engineer.

Q. Who? A. Byron Norris.

Q. It was prepared by Mr. Norris?

A. Yes.

Q. But when you signed it you read it?

A. Yes.

A. I don't remember whether I read it, or not.

Q. Are there many things in it that you saw, yourself? [172]

A. Well, I don't remember what I did see in it.

Q. Are there many things in it that you did not see at all?

A. Well, I wouldn't say that, either. There are things that I read in it there lately, but——

Q. Had you finished? A. Yes.

Q. Let us go on from there. From the date, September 24th, until when this gas was seen and the mud was flowing out from the rotary table the exploration was continued, is that correct?

A. Yes, whatever was required then, yes.

Q. In other words, you did not stop there. The operation was not stopped at 4275 feet, but they got the mud under control and kept it going?

A. No, they increased the mud weight so they

(Testimony of Joseph Faria, Jr.)

could take a Schlumberger and an electric log of the well.

Q. Did they take a Schlumberger at that time?

A. After they built the mud up heavy enough to kill the gas flow.

Q. And then you ran various Johnson tests on the matter?

A. That is right.

Q. And you said that on the first one or two of those the packer did not hold, but the third was successful, is that correct? A. Yes.

Q. What did you mean by successful?

A. Well, that was after we put the casing in the well.

Q. When you said "successful," did you mean that the test showed a commercial gas discovery, or did you mean that it worked mechanically and therefore it succeeded in making the test? [173]

A. It worked mechanically and succeeded in making a test.

Q. What gas did the test show?

A. The report was 100,000 cubic feet per day, and on the next test was 125,000.

Q. And the next test was October 27th, is that true? A. Well, I would say——

Q. Take a look and see if that was the last test.

Mr. Scampini: That is 1943, Counsel?

Mr. Bourquin: Yes, 1943.

The Witness: What was the date you are referring to?

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Bourquin): What was the date of the last Johnson test on the exploration in 1943?

A. There is one date here on October 5.

Q. Let me put it this way: Look and see on your log when you quit; look and see when you shut down in 1943 and give us the date there.

A. That was October 27, 1943.

Q. What was on October 27, 1943?

A. It shows here that——

Q. Was that the date that you shut down?

A. That, I don't know.

Q. Well, look at it.

A. It says here, "Schlumberger shot from 4270 to 4280, arrested, same packer, set at 4240. Open 7 p.m., closed down 8:40 p.m. Pulled up to 3760 and set packer, open valve."

Q. Aren't you sufficiently familiar with that operation over there to tell us when it was that you shut down the operations of 1943?

A. Yes. We shut down in the latter part of October. Yes, right around the latter part of October. [174]

Q. Can't you tell us the date? Let me see your log, please. In this log book there is a single page devoted to every day, isn't there? A. Yes.

Q. It records the operations that result on each shift, or as the oil people call it, tower, and spelled t-o-u-r?

A. I don't know how they spell it. It is tower.

Q. How do you spell it?

(Testimony of Joseph Faria, Jr.)

Q. Three tours, three shifts. A. Yes.

A. I never had the occasion to spell it, myself.

Q. Will you examine the book and tell me if October 27th is not the last date entered in that book for the operations in 1943.

A. If there isn't any of the pages missing here it would be the last one, but I would refer to the carbon copies of the other; the originals are over there.

Mr. Bourquin: I am not clear with the witness' answer. May it be read?

(The answer was read by the reporter.)

Q. (By Mr. Bourquin): You have referred to the log for the day October 27, 1943, have you not? A. Yes.

Q. Does that log, that day record that a Johnson test was made successfully to estimate that gas of 125,000 cubic feet was—— A. Yes.

Q. It does. Now, will you turn the page in that log book and tell me if there is any operation recorded on the next page.

A. Well, it does not—— [175]

Q. Please answer the question. We ask, your Honor, the question he answered "Yes" or "No," and let him explain if he cares to. Is there any——

A. There is not, it doesn't show any operation. It is signed here by the man.

Q. There is no operation on the next page?

A. It doesn't say anything there.

(Testimony of Joseph Faria, Jr.)

Q. You say it is signed by the name of E. V. Keefe. A. Yes.

Q. Who is he?

A. I don't know. He is a worker, he was employed.

Q. Who is he denominated as on here; the fireman, isn't he? A. Yes.

Q. He signed the log the next day, the next day after that, in the log of this well, and this is the original log?

A. That is the original page.

Q. And the next entry that appears is the date of June 18, 1944; isn't that correct?

A. That is correct for that page, June 18, 1944, is entered.

Q. Signed by J. M. Anderson, Driller?

A. Yes.

Q. Another crew member. So if we were to clarify that, it is a fact, isn't it, that when you had gone down in 1943 to 4268 and encountered heavy gas that blew out over the rotary table and had gone further and encountered, and made your Johnson exploration down to 4375 feet, made the last test, it shows only 125,000 cubic feet on October 27, 1943, the well was shut down, wasn't it?

A. You doubt what?

Q. Wasn't it? It was shut down, wasn't it?

A. The well [176] was shut down after we had all our tests and drilled to the depth of 4394 feet, or 98 feet.

(Testimony of Joseph Faria, Jr.)

Q. When you got to 4275 and you ran a section on the Johnson test at different levels in your casing you got only 125,000 cubic feet on the showing on the Johnson test and you shut down?

A. Yes, I believe we did; yes, I think we shut down at the time. I am not so sure.

Q. By the way, you have been interested in that end of the business; what would you say would be the minimum volume of gas that would have to be found to constitute a commercial volume; in other words, justify exploration and production.

A. I could not answer that.

Q. You could not answer that. Do you recall testifying and giving your deposition in this matter, Mr. Faria? Do you remember?

Mr. Scampini: You can answer it.

The Witness: A. Yes.

Mr. Bourquin: I want to call his attention. Counsel, I will show him a copy of the deposition that I have here. Have you your copy?

Mr. Scampini: I think so.

Mr. Bourquin: I want to draw your attention to pages 66 and 67, where you were interrogated by Mr. Burns, and where Mr. Beardsley was present; will you just look at that? A. Page 66.

Q. Yes, and read from line 9 on page 66 down to line 18 on 67? A. Starting at 66?

Q. If I may interrupt, with your leave, counsel. I will ask this: Didn't you testify when you gave your deposition under oath that the minimum quan-

(Testimony of Joseph Faria, Jr.)

tity that would constitute commercial discovery was one million cubic feet per day?

A. I can tell better here after I read it.

Q. Read it there.

A. "Mr. Maria, for Faria Well No. 1 what would you consider would be gas in commercial quantity; how much gas would there have to be for that well, considering where it is, and the sources of sale and the other factors, how much gas would you think there would have to be to have it in commercial quantity?"

A. That is a hard thing for me to answer; I don't know.

Q. Well, you are an oil well operator, from your experience, what would you say would be the minimum for gas in commercial quantity?

A. No response.

Q. In other words, to make money, to pay back the investment in the well, and to make some money out of it?

A. I could just give you my honest opinion.

Q. That is all I am asking for.

A. I would say a million feet.

Q. A day?

A. Cubic feet of gas per day, might do it; I don't know, I don't want to say that is right."

Q. That was your opinion?

A. Yes. [178]

(Testimony of Joseph Faria, Jr.)

Q. You had an opinion then it would be a million cubic feet.

Mr. Bourquin: Does your Honor plan to run until later?

The Court: Well, I thought we would adjourn by 4:30, unless you had some matter.

Mr. Bourquin: Well, I just wanted to know. We want to go into a subject, your Honor, that might be running for sometime.

The Court: Well, do you wish to have the recess?

Mr. Bourquin: I think we might.

The Court: Then we might as well adjourn now. Ladies and gentlemen, we will adjourn until tomorrow morning at ten o'clock. Will you please return at that time, and bear in mind that it is still your duty not to talk about the case among yourselves or permit anyone else to talk to you about it, nor are you to form or express any opinion concerning the matter until the case is finally submitted to you. We will adjourn until tomorrow morning at ten o'clock.

(An adjournment was here taken until tomorrow, Friday, January 24, 1947, at ten a.m.)

Friday, January 24, 1947, 10 o'Clock A.M.

The Court: The jurors are all present. You may proceed. Do you wish to continue with your cross-examination of the witness?

Mr. Bourquin: Yes, your Honor.

JOSEPH FARIA, JR.

recalled as a witness for defendants; previously sworn:

Cross-Examination
(Resumed)

By Mr. Bourquin:

Q. Who was Bud Hildebrand, the man who took the leases with you in the first place?

A. Bud Hildebrand was a man who had been in the drilling experience for some time.

Q. He had been in the drilling business?

A. Yes, he worked for different people.

Q. Had he done any on his own account?

A. That I don't know.

Q. Where did he live?

A. Well, he lived in Bakersfield, I believe, at some of the time.

Q. Baker Street or Bakersfield?

A. Bakersfield.

Q. You said he is now dead? A. Yes.

Q. When and where did he die?

A. He died in Bakersfield.

Q. Was he a resident of Bakersfield, as far as you knew?

A. That I don't know, whether he was or not. He did live there for awhile. [180]

Q. Did you pay him anything for his interest in these leases when he assigned to you?

A. No.

Q. Did you make any arrangement to pay him

(Testimony of Joseph Faria, Jr.)

anything for his assignment of his interest to you?

A. No. He called me, he was sick in a hotel at Newman, and he asked me to come up and see him, he phoned me, and I went to see him. He said, "Joe, I'm very sick and I don't know"—

Q. Well, we are not interested in what he said at that time. If there is anything there your counsel may want to bring it out, they will ask you.

I wanted to know, did he make a gratuitous assignment of his interest in the leases to you?

A. He did.

Q. Did you pay anything to your aunt and the others in the neighborhood there for the leases?

A. No.

Q. You didn't pay any cash consideration?

A. No.

Q. In other words, you merely took the leases with the engagement to give them something in the way of a royalty if a discovery was made, is that true? A. Yes.

Q. To come back to this once more, what we were talking about yesterday, how much stock did you sell, how much of that corporate stock was sold out to the stockholders?

Mr. Scampini: If your Honor please, I rise to object to this line of cross-examination on the ground it is wholly irrelevant to the issues of the case. How many shares the corporation sold, whereby he received a commission is wholly [181] collateral.

Mr. Bourquin: If your Honor desires—

(Testimony of Joseph Faria, Jr.)

The Court: No, I think not. The witness has testified as to how much this is worth. He is, for all practical purposes, one of the chief members of the corporation and his interest may be inquired into. I will overrule the objection.

Q. (By Mr. Bourquin): Can you tell us, Mr. Faria, how much stock was sold out to stockholders?

A. There was about two hundred fifty-two thousand, in that neighborhood.

Q. Two hundred fifty-two thousands shares sold?

A. Yes, more or less; I don't quite recall.

Q. Did the 252,000 include the 62,500 that you received and that is escrowed, as you testified?

A. No. It is—the 62,500 shares is additional to that.

Q. It is additional to the 252,000? A. Yes.

Q. So now there are, plus the stock which is held in escrow—— A. Yes.

Q. The corporate stock was sold to the extent of 252,000 shares? A. Yes.

Q. You said the stock was par value of a dollar?

A. Yes.

Q. And was all the stock sold at par value?

A. Yes.

Q. All sold for a dollar. Now then, again, you said your commission on the sale of stock was 20 per cent? A. Yes, for what I sold.

Q. For what you sold?

A. With the exception I bought a [182] lot of stock for my family and myself, about over nine

(Testimony of Joseph Faria, Jr.)

thousand dollars worth, and that I paid one dollar straight out for.

Q. You didn't take the commission?

A. No. The Board of Directors, they bought themselves for a straight dollar, no commission.

Q. Did you receive for the sales made in 1943 the sum of \$26,482?

A. Well, that I don't know. I would have to go through the books to arrive at that, and I will have to go to Stockton. I will have to go tomorrow or Monday. I couldn't make it last night. The book-keeper's office would be closed. I wouldn't have any time to go there.

Q. You did have, I think you testified yesterday, that the stock sales in 1944, you received \$9,672, that is true?

A. I don't know. I don't remember whether I received that much money or not. I don't remember the amount. I can't recall the amount that I received, but it was all put back right into the company. I was advancing money to them and, in fact, in reality I didn't get anything. It was all given back, all of this money. I helped the company along, since it was to my interest. It was my company and the stockholders and I kept the company—this money all went back into the company.

Q. You testified yesterday, Page 169 of the transcript, that you did not get all of the rent from it? A. That's right. [183]

Q. You were renting your equipment at the rate of \$100 a day?

(Testimony of Joseph Faria, Jr.)

A. Yes, and that was very reasonable for the kind of equipment I had.

Q. Your equipment was in the property from July 8, 1943——

A. It was on the property in 1942. There were many days I never did charge, only if it was used. I was very fair with the company.

Q. You testified yesterday that you advanced the company \$34,657.77; that is correct?

A. Yes.

Q. You said that includes the rent?

A. Yes.

Q. How much of that was rent on the equipment that was not paid out to you?

A. I don't know exactly how much of that was rent; I don't know. I would have to go to the bookkeeper or through my books at home and also in Stockton.

Q. Have you any idea?

A. Well, I think there was 137 days of rental that I was not paid for.

Q. 137 days you were not paid for. The balance of the time that the equipment was in operation you were paid, were you?

A. I was paid for some of the time it was in operation.

Q. Were you paid for all the time the equipment was in operation except for 137 days?

A. Well, I don't know, but I think so. I was paid for a good part of the time; that is, I was paid for some of the time and this thing involved money and I had to advance, it is kind of hard

(Testimony of Joseph Faria, Jr.)

for me to state from memory, because I had—the company sometime would be broke [184] and I would have to advance money out of my own pocket to keep the thing going.

Q. Did you take a note for that?

A. No, I didn't take any note for that.

Q. Take any stock for that? A. No.

Q. You mean you just advanced the money?

A. I just advanced the money.

Q. And did not take anything for it?

A. No. When the company had money enough they would pay me back.

Q. When the company had money enough they would pay you back?

A. Yes, I would help them to keep the thing going. I didn't want it to stop. Whenever I had money enough and they were short I would help them.

Q. How much does the company owe to you now?

A. The company owes me at the present time \$34,657.77.

Q. May I see your memorandum on that?

A. Well, this is just—this figure I put here at the bottom, that is not a memorandum, this is just what I have advanced.

Q. Let me look at it a minute; you have been referring to it.

This memorandum which you have referred to to refresh your recollection from is in typing?

A. Yes, it is in typing.

(Testimony of Joseph Faria, Jr.)

Q. Who typed it? A. My wife typed it.

Q. Your wife typed it? A. Yes.

Q. You have the notation that the first permit granted was for 62,500 shares. That is correct?

A. Yes. [185]

Q. That the second permit granted in July, 1943, was for 30,000 shares? A. Yes.

Q. And that the third permit, and the information is prefaced by a date, September, 1943, was for 45,000 shares; that is correct? A. Yes.

Q. With the notation there were or are approximately 632 stockholders; is that correct?

A. Yes.

Q. Then you have on here in typewriting, "Moneys advanced by Joseph Faria, \$34,657.77"?

A. Yes.

Q. That is correct? A. Yes.

Q. That would include the rent of the equipment for the 137 days that you were not paid for, would it? A. Yes.

Q. That would be \$13,700? A. Yes.

Q. What does the other \$20,000 advance make up?

A. It is in the form of money I advanced at different times we needed while in drilling operations and was required all the time we were working there.

Q. Who handled the corporate money?

A. It was handled by Russell Gwinn in Stockton.

Q. Who managed the operations, who did the buying and who passed on vouchers for payment?

(Testimony of Joseph Faria, Jr.)

A. I had the management of this corporation.

Q. You did that? A. Yes.

Q. If we may say this, subject to your checking the matter, you did receive in commissions of 20 per cent \$24,652 plus [186] \$9,678, or approximately \$35,500, and that you did receive rent of the equipment in the sum of approximately \$10,000; that is correct, is it?

A. Well, I don't know. As far as the amount that I received in commissions, I don't know.

Q. Mr. Faria——

Mr. Scampini: Mr. Bourquin, may I interrupt to say that I have a complete audit in my office. I will deliver a copy of the audit to you if you would desire it.

Mr. Bourquin: Well, it might be of interest, but I haven't any curiosity about it. I wanted the matter shown in the record.

Mr. Scampini: I will be glad to furnish you with a copy of his audit if you wish it.

Q. (By Mr. Bourquin): Mr. Faria, when the operations had been shut down October 27, 1943, Mr. Norris made another report, did he?

A. Yes.

Q. You filed that report with the Commissioner of Corporations, did you not? A. Yes.

Q. And based on it made an application for permit to issue and sell new stock; is that correct?

A. Yes.

Q. And the stock that was sold was stock on a succession of permits, that and the earlier ones

(Testimony of Joseph Faria, Jr.)

running up through August, 1944? A. Yes.

Q. I believe Mr. Norris made another written report to you on August 18, 1944? A. Yes.

Q. You filed that with the Corporation Commissioner? A. Yes.

Q. To serve the same purpose? A. Yes.

Q. Again turning to this log that we had here yesterday, we were discussing yesterday the blow-out over the rotary table that you encountered September 24, 1943, and I asked you concerning what was done and how long was spent to control the action of the well.

We desire at this time, your Honor, to put in evidence in this matter the log sheets for the dates from September 24, 1943——

The Witness: Pardon me. That was the——

Mr. Bourquin: Just a minute, Mr. Faria. We have not addressed a question to the witness, your Honor.

I desire to offer in evidence the log sheets for September 24, September 25, September 26, 27, 28 and 29, as Government exhibits in order.

Mr. Scampini: May it please the Court, we will object to the offer of any particular page from the log book. We desire the whole log book to go into evidence there. It is only in for the purpose of identification now, and if any particular portion of it goes into the record, the whole log book should go into the record.

Mr. Bourquin: I don't know of any rule to that effect.

(Testimony of Joseph Faria, Jr.)

The Court: Counsel is entitled to offer what he wants. [188] Of course, you can offer what you want, too.

The Clerk: Do you want each page marked separately in order, Mr. Bourquin?

Mr. Bourquin: Yes. I see that those days are in order in the log book, at least, by the pencilled memorandum.

The Clerk: Plaintiff's Exhibits A, B, C, D, E and F, in order.

(Thereupon the log sheets in question were received in evidence and marked Plaintiff's Exhibits A, B, C, D, E and F.)

Mr. Bourquin: I would like to offer additionally to that the log page for September 30, your Honor, added to that.

The Clerk: Is that the year 1943?

Mr. Bourquin: 1943, the earlier year.

The Clerk: That will be marked Plaintiff's G. Those are September 24 through the 30th for the year 1943, Mr. Bourquin?

Mr. Bourquin: Yes.

(Thereupon the log sheet for September 30, 1943, was received in evidence and marked Plaintiff's Exhibit G.)

Q. (By Mr. Bourquin): Mr. Faria, while we are on that subject, the experience at the well on September 24, 1943, that we are talking about was summarized by you in the summary you said was

(Testimony of Joseph Faria, Jr.)

prepared by Mr. Wents and signed by you and filed with the Division of Oil and Gas dated January 15, 1945, as follows: "Struck heavy gas flow at depth of 4268 feet. Had to circulate until September 29 to kill gas. Put in new mud [189] and 620 sacks of Baroid." That is correct, that is the summary?

A. Yes.

Q. That is the way you understood the matter when you signed the summary? A. Yes.

Q. And the summary which was prepared by Mr. Wents? A. Yes.

Q. You were at the well because you saw that mud kicking out? A. Yes, I was there.

Q. You said—the summary states that new mud was put in. To what extent was new mud put in there?

A. Well, that is the Baroid, the mud to kill the well, to offset the pressure.

Q. Was any new mud put in?

A. Yes. It is all mixed in in the mud pit.

Q. In other words, at that time the mixture was changed and replenished?

A. The weight was added.

Q. Let me ask this, you told us yesterday that you poured in oil in this well in 1944. Can you tell us when that was done?

A. I will have to refer to the log book.

Q. You will need the log book?

A. Yes, for that particular date, if that is what you want.

Q. Yes. Let me give that to you then, please.

(Testimony of Joseph Faria, Jr.)

A. We poured oil into that well twice. Do you want the first time?

Q. Let's get the first time first. Let me ask you, was that November 8, 1944?

A. Well, I will see if that was the [190] first time. I think it is. Yes.

Q. How was that done, by just introducing the oil right into the system, down the drill pipe?

A. No, that was pumped down the drill, through the drill pipe by Alaberton cement wagon, they came on the job and they ran, I don't know just how many barrels, I imagine about seven or eight barrels of oil, that was pumped down in through the drill pipe to the end of the bit and around the drill collar and it was left there for awhile to saturate the formation that was around the bit.

Q. In other words, it was pumped right down the drill pipe? A. Yes.

Q. It was for the purpose of trying to release the stuck pipe? A. Yes.

Q. How much oil was introduced, how much was pumped down?

A. I don't know exactly. I don't know, but there is a record here.

Q. What does the record say?

A. It says "Oil spotted in hole."

Q. "Oil spotted in hole." Does it say how much?

A. It don't state the amount.

Q. Were you there?

(Testimony of Joseph Faria, Jr.)

A. I don't think I was there at that time, but the drilling superintendent was there.

Q. Who was he? A. Mr. Mayes.

Q. Mr. Mayes? A. Yes. [191]

Q. What was your understanding of how much oil was pumped down the drill pipe at that time?

A. On that particular time I don't know, but I do know about the other.

Q. Just a minute. On that particular time you don't know?

A. I don't know the exact amount of oil that was spotted in that well.

Q. Do you recall that on your deposition you said, "I would roughly say maybe 25 barrels"?

A. It could possibly be that much.

Q. A barrel is how many gallons, sixty?

A. I think about forty-two or fifty gallons.

Q. Do you know?

A. I don't know either of that, but I imagine that is what it takes.

Q. When was oil spotted again into the well? Was it on November 22, two days before the well blew out? A. Yes.

Q. Does the record show how much oil was pumped down in the well November 27, 1944?

A. No, it don't. I don't see it here.

Q. Doesn't show? A. I don't see it.

Q. Were you there?

A. Yes, I was there that day.

Q. Was it 25 barrels?

(Testimony of Joseph Faria, Jr.)

A. I don't think it was that much.

Q. Do you know?

A. I don't know exactly how much, only by what Mr. Mayes told me, 8 barrels.

Mr. Bourquin: Well, I will move that what Mr. Mayes told him be stricken. I understand he is going to testify, your [192] Honor. It is hearsay.

The Court: All right.

Mr. Bourquin: Let me put it like this—well, at this time, if the Court please, the Government desires to offer in evidence the log for November 27, 1944, and in addition to that, the log commencing with November 25, including the log page for November 26, the earlier offer of November 27, additionally the log page for November 28 and the log page for November 29, 1944, as exhibits next in order.

The Clerk: I will mark them H, I, J, K, and L, in order, Mr. Bourquin.

Mr. Bourquin: All right.

(The log sheets in question were thereupon received in evidence and marked, respectively, Plaintiff's Exhibits H, I, J, K and L.)

Q. (By Mr. Bourquin): On November 25, 1944, four days before this well blew out, the pipe stuck a certain distance off the bottom; is that correct?

A. The pipe stuck; I remember it sticking. I don't know if that is the exact date.

(Testimony of Joseph Faria, Jr.)

Q. You testified yesterday that some lengths of pipe—how much was that?

A. I would say, 200 feet.

Q. How many lengths?

A. It was two double lengths and a single, I think, if I remember right.

Q. From that time on, was the pipe ever freed until the blowout of November 29, 1944?

A. We didn't free the pipe on [193] the last time that it got stuck.

Q. Are you able to answer the question as to whether or not the pipe was freed after it stuck 200 feet off the bottom and until the blow-out of November 29?

A. No, it was not free.

Q. It was not freed? A. No.

Q. There was no drilling, no cutting?

A. No.

Q. By the bit or drilling done after the pipe was stuck at the point 200 feet off the bottom until the blow-out of November 29, 1944; that is correct?

A. That is right.

Mr. Bourquin: That is correct. [194]

Q. You testified yesterday—I made a note of it—that the drillers never regained circulation of the fluid, the mud, after the blow-out of November 29, 1944, did you?

A. They couldn't—they didn't regain circulation. They lost circulation after the blow.

(Testimony of Joseph Faria, Jr.)

Q. Did you testify yesterday that they never regained circulation after the blow-out of 1944?

A. No, they lost circulation.

Q. Did they ever regain it?

A. Well, they had a little circulation, but they lost it, just after, a little bit, not very much.

Q. Let me ask you, did you testify yesterday they never regained circulation after the blow-out?

A. They lost circulation after the blow.

Q. Please answer the question. Did you testify yesterday that they never regained circulation after the blow-out of November 29, 1944?

A. They did not regain circulation after the blow.

Q. Did you so testify yesterday?

A. I believe I did.

Mr. Bourquin: We desire, your Honor, at this time to offer in evidence also as part of the Government's exhibit, the log sheet of November 30, 1944. I would like to say, without taking the time to read this, as it will come up in a discussion with the experts, perhaps, the purpose of the offer of that now is to show that on November 30, 1944, the second tour, the log recorded, "Circulating." [195]

Mr. Scampini: I did not hear that, counsel.

Mr. Bourquin: I was calling your attention to the fact that the log, on that day, the second tour, whichever shift that is, the day shift—shows, "Was circulating."

(Testimony of Joseph Faria, Jr.)

(The sheet in question was thereupon received in evidence and marked Plaintiff's Exhibit M.)

Q. (By Mr. Bourquin): "Circulating," Mr. Faria, would mean that the mud was being pumped down the drill pipe and moving down the drill pipe, out the bottom of the pipe, and up the hole around the drill pipe, is that what "circulating" means?

A. That is right.

Q. In other words, circulating on November 30th would mean that the hole to the depth of the bit or end of the drill pipe was open on November 30, 1944, wouldn't it?

A. Well, yes.

Q. Would it mean that?

A. It would mean that, certainly. There would have to be an opening there to let it through.

Q. And an opening sufficient to transmit or travel this mud?

A. Yes.

Q. When you went back on the property in 1944 did you commence to sink the hole, or did you do something before you did any more drilling?

A. In July we swabbed, 1944.

Q. What do you mean you swabbed?

A. Swabbing is to set tubing in the casing and take a pull—set aside the wall packer and take a pull and give the formations a fair test and see if there could be any additional gas drawn from it than we had [196] before, and the tests were made in 1943.

(Testimony of Joseph Faria, Jr.)

Q. In other words, when you resumed operations in 1944—July 8th?

A. I believe that is the correct date. I don't know, but I think so.

Q. You did not drill, but you went in and re-tested the old 1943 hole, is that correct?

A. Yes, that is right.

Q. Had the perforations in the 1943 hole been sealed up to that time?

A. No, they were not sealed, no, not cemented off.

Q. So what you were doing was by a swab method making another test looking for the same information sought by the Johnson scientific tests in October, 1943?

A. We did that. We wanted to be fair—before we went any deeper, we wanted to be very fair about it.

Q. How long was it before you abandoned your re-test and started to deepen the hole?

A. I don't know. That would be in the log book. It would show up.

Q. That swabbing test that I have termed a re-test is also known as a production test, isn't it, Mr. Faria?

A. Well, I would say that it is used to give the formation a fair test to see if you can improve it any by drawing on it.

Q. Was it again negative?

A. Well, we didn't take a Johnson.

Mr. Scampini: I object to the question on the

(Testimony of Joseph Faria, Jr.)

ground there is nothing in evidence to the effect that it was negative. [197] your Honor.

The Court: He is asking whether it was negative.

Mr. Scampini: He said was it again negative?

Mr. Bourquin: I am referring to the fact that the Johnson test was negative. I thought that was settled.

Mr. Scampini: I respectfully submit that the Johnson formation test was far from negative, your Honor.

Mr. Bourquin: I am speaking of negative in the sense, did they find anything justifying the operation, or not?

Mr. Scampini: That is a matter of debate and opinion.

Q. (By the Court): Did you learn anything differently from this test than you learned before?

A. We did not apply any Johnson test on this.

Q. (By Mr. Bourquin): In 1944, but you went right down with your tool—— A. Yes.

Q. And brought up anything that was there in your tool? A. We took a pull on it, yes.

Q. Did you get any volume?

A. Well, there was a gas showing. How large it was I don't know.

Q. Was there any test made for volume?

A. No.

Q. None, at all?

A. I don't think so. I would have to refer to the log book on that. I am not so sure. I can't recall

(Testimony of Joseph Faria, Jr.)

everything that happened, but the log book ought to show what happened.

Q. As a man interested, don't you know whether test gave you [198] any volume, or not?

A. Well, I don't know. It would have to be checked in the log book, and I would have to find out from the men that worked there.

Mr. Scampini: A little louder, Mr. Faria, please.

Mr. Bourquin: I find, your Honor, that this log book is not all in order, and it is a little difficult to get to the particular pages.

Q. When you went in July to resume operations, how many crews did you put on?

A. We just ran one shift.

Q. One shift? A. One 8-hour shift.

Q. One day shift? A. Yes.

Q. And your driller was who?

A. Anderson.

Q. The man whose name appears, J. M. Anderson, as a driller?

A. That is right. He was the head driller.

Q. How long was Mr. Anderson on that crew with you?

A. Oh, I don't know. I would say maybe a month. I am not so sure. It would show there on the log.

Q. Did Anderson remain throughout the operation of 1944? A. No.

Q. Did he remain until the time, August 22nd, that the bit was stuck and the pipe was pulled in two? A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. Did he remain after that during the time that the bit was fished for?

A. Yes, he remained there—yes, we did some fishing for it. I believe the log shows we recovered everything but the bit and drill collar. I think he worked [199] to that.

Q. Did you let the Anderson crew go, or did the Anderson crew go?

A. We let them go because we wanted to put on three shifts and speed up the drilling.

Q. So you did not add two more; you let the Anderson crew go and put three entirely new shifts on?

A. You see, we had to go look——

Q. Did you do that?

A. Yes, we let them go and looked for a crew at Long Beach, a three-shift crew.

Q. Was the well shut down and idle from September 5th to September 29th?

A. I believe it was.

Q. 1944? A. Yes, I think so.

Q. On September 29th did the new crews resume the fishing for the drill pipe?

A. They tried to get the drill collar out and bit.

Q. It was after that, then, that the window that you described was cut and the whipstock was put down?

A. Yes, that is right.

Q. In the course of those operations in 1944 did you make any scientific tests such as had been made in 1943? Did you make any Johnson tests in 1944?

A. No.

(Testimony of Joseph Faria, Jr.)

Q. Did you make any Schlumberger test in 1944, formation tests? A. No.

Q. Before you abandoned there when the well blew out, were any tests applied or made?

A. No, they only took two cores previous [200] to the blow-out.

Q. And when the blow-out happened and after that were any cores taken? A. No.

Q. Were any tests made? A. No.

Q. For oil or gas? A. No.

Q. None, whatever. Have you the Johnson reports that were made to you on the tests made in 1943? A. Yes.

Mr. Bourquin: May we have those, Counsel?

Mr. Scampini: I have already delivered copies to your assistant.

Mr. Bourquin: I have one, Mr. Scampini, but only one. I had a photostat of that one.

Mr. Scampini: I think I delivered four photostats to your assistant. I had photostats made purposely.

Mr. Bourquin: We will get out of all that trouble if you will introduce the originals.

Mr. Scampini: I will have to find them. That is all.

Mr. Bourquin: All right, when can, please.

Mr. Scampini: Yes.

Q. (By Mr. Bourquin): Mr. Faria, can you identify the Johnson Oil Field Service Corporation's test dated October 27, 1943, and the test chart accompanying that?

(Testimony of Joseph Faria, Jr.)

A. Yes, this is the Johnson test.

Q. Of October 27, 1943?

A. That is right.

Q. The time upon which the well was shut down in 1943? [201]

A. That is right, yes.

Q. And the chart is the chart of the test?

A. Yes.

Mr. Bourquin: We will offer these in evidence, if the Court please, as Government's Exhibit next in order.

The Court: What date was that? October what, did you say?

Mr. Bourquin: October 27, 1943, the day the operation was shut down in 1943.

(The chart in question was thereupon received in evidence and marked Plaintiff's Exhibit N.)

[Plaintiff's Exhibit N appears on Pages 1276 and 1277.]

Mr. Bourquin: I will have to take time to examine this. I will not take the time of the jury and your Honor now.

Q. During the operation in 1944, when you say you had all the troubles, did you have nearly every kind of trouble you could conceive of in an operation in 1944?

A. We had lots of trouble, yes.

Q. Your pipe stuck repeatedly? A. Yes.

Q. And it pulled in two? A. Yes.

Q. You lost your collar and bit? A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. And thereby plugged your hole and you had to make another at the bottom?

A. Yes, we had to cut a window—we had to cut the casing out 18 to 20 feet of the casing, mill it out.

Q. Did you have any trouble with your mud?

A. Yes, we had lots of trouble with mud. There was so much gas it would cut it up. We went to considerable expense for Baroid to build up [202] its weight to counteract the gas pressure.

Q. And you say you had a mud man on the ground? A. Yes.

Q. That was a Baroid salesman? A. Yes.

Q. Did he make reports to you on the mud from time to time?

A. Yes, he was there and checked the muds.

Mr. Bourquin: Have you those reports, Mr. Scampini, the mud reports?

Mr. Scampini: Yes.

Mr. Bourquin: May we have those, too?

Mr. Scampini: I will repeat: I delivered copies of all these reports to you already.

Mr. Bourquin: I do not have any of these reports.

Q. Did you have trouble with your pump?

A. The mud pumps?

Q. Yes.

A. Yes, we had some trouble with them.

Q. What was the capacity of the mud pump you had in there in 1944?

(Testimony of Joseph Faria, Jr.)

A. That I don't know. I don't know the capacity of those mud pumps. They were compounded.

Q. What?

A. They were compounded. I don't know the capacity of them. You would have to get that from the drilling superintendent. Maybe he would be able to give you that information. I don't know.

Q. Did you shut down during repeated intervals in 1944? I mean this: Did you stop circulation repeatedly in the operation in 1944?

A. I don't remember. We would have to check in the log book for those things. That I don't know. It is [203] hard for me to remember.

Q. Did you shut down repeatedly for a shortage of water?

A. Yes, I remember one day the pump—the water pump gave us a little trouble. I had to repair it, and we were short of water for a while.

Q. In 1944? A. Yes.

Q. When?

A. I think it was in November, if I remember right.

Q. You were short of water. When you did not have water you could not make steam and you could not run your pump? A. That is right.

Q. And so you had that experience there?

A. Yes.

Q. Did you bring in water on the property, or were you able to get the water on the property?

A. It didn't take me long to repair it.

Q. No, did you bring water in to the property

(Testimony of Joseph Faria, Jr.)

or did you deal just with water you were able to get off the property there?

A. I got the water off the canal that went by there, the Central Valley Canal.

Q. The Central Valley Canal, that is, the Contra Costa Canal? A. Yes.

Q. How did you get it from there? By pipe-line? A. Pipe-line, yes.

Q. You put a pipe-line to the Central Valley Canal?

A. From the Central Valley Canal to the tank up on the well site.

Q. You pumped from the Contra Costa Canal?

A. That is right. [204]

Q. When did you do that?

A. When did I do that?

Q. Yes.

A. From the very beginning, when we began our operations, drilling this well in 1943.

Q. In 1943?

A. Yes, on July 14th we started drilling. We had to be all set with water, plenty of water.

Q. And you laid a pump?

A. We didn't lay a pump, we laid a pipe to the tank.

Q. You did not pump from the creek at the bottom of your hill, there, as Mr. Norris recommended? A. No, we didn't use that.

Q. By the way, when did Mr. Beardsley retire from this case?

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: We object to that as incompetent, irrelevant, and immaterial. There was no resignation of Mr. Beardsley from this case.

Mr. Bourquin: If there wasn't, it is a matter that could have been disclosed before.

Mr. Scampini: It was not a case of resignation; it is a case of substitution. The substitution is on file and it speaks for itself.

Mr. Bourquin: We will get the date on that, your Honor. I will withdraw the question.

Q. When you resumed operations, commenced these operations, and re-tests in July, 1944, did you know that the Government was considering acquiring this property and the surrounding property?

A. I didn't know that they were—I didn't [205] know anything about it until I was served with the condemnation papers.

Q. When was that, again?

A. That was in July, if I remember right, July 24th or 25th, I think.

Q. 1944? A. 1944.

Q. Prior to that time had you heard that the Government was going to need that property?

A. Well, they were working down below—there were surveyors working down in there. We tried to obtain information from them but they wouldn't give us anything—down on the floor of the valley below us, there.

Q. Below this well? A. Yes.

Q. When did you see the surveyors there?

(Testimony of Joseph Faria, Jr.)

A. Well, I saw them there in June, if I remember right, working around there in June and July.

Q. June? A. Of 1944.

Q. Let me ask you this: Did you have no notice of any kind or character prior to July 25, 1944, that the Government was considering taking this property for its purposes?

A. Only with what I saw there with the surveyors, and I didn't know what it was for. I didn't know anything about it. I didn't know what was going to happen.

Q. Prior to the service of the order of this court on you to surrender possession July 25, 1944, you had never heard of that?

A. No, I didn't know what was going to happen.

Q. You had never consulted with anybody about it?

A. Only I went to the surveyors and wanted to find out what they were doing, and they wouldn't give us any information as far as boundaries, or anything like that.

Q. When you first saw the surveyors down below you, was that before or after you had resumed operations there?

A. That was after we had resumed operations.

Q. After you had resumed operations, and when is it that you say you resumed operations? July 8th?

A. We resumed operations in July, 1944.

Q. So the first notice of any kind or character

(Testimony of Joseph Faria, Jr.)

of the Government's presence or intention in there that you had was you saw some surveyors down there after you resumed operations in July, 1944?

A. That is right.

Q. You never discussed the matter with anyone before that?

A. No—well, I did discuss with my aunts, wondering what was going to happen there, but nobody seemed to know exactly what it was all about.

Q. When did you discuss with your aunts what was going to happen there?

A. I don't recall the date. I don't know when I seen the surveyors there. Whatever date it was. I don't know.

Q. Did you hold a discussion with your aunt before or after you resumed operations in 1944?

A. After I resumed operations.

Q. Not until after you had resumed operations?

A. That is right. [207]

Q. Had you received any notice, written or oral, of any kind prior to your resumption of operations in July, 1944, that the Government was interested in property there?

A. No, I didn't receive any notice.

Q. You had not held any conferences with anybody, or anybody connected with the Government?

A. No, sir.

Q. I believe you testified that after the blow-out of November 29, 1944, you did not further drilling?

A. That is right.

(Testimony of Joseph Faria, Jr.)

Q. You were there after that blow-out, were you?

A. I arrived on the scene just after they had the well under control.

Q. What do you mean they had the well under control?

A. They checked the blow. They stopped the flow of gas, oil, mud and so forth.

Q. Was there any flow surging when you arrived there? A. No.

Q. The well was in that respect quiet when you arrived? A. Yes.

Q. You say you got there about one o'clock in the afternoon?

A. Yes, I imagine about one o'clock.

Q. Was the well closed in, or not?

A. Yes, it was closed in.

Q. You believe it was. Do you know?

A. Well, the drilling superintendent told me he had it closed in.

Q. You did not go to see?

A. No. I was on the derrick floor then, and I was looking at the oil that was all over the derrick floor, on the tubing, and out on the drill pipe.

Q. Was there a blow-out preventer installed on that operation? From the outset?

A. It was there—we had it from the very beginning.

(Testimony of Joseph Faria, Jr.)

Q. Was that closed when you got on the property at one o'clock on November 29th?

A. I would say yes, it was.

Q. Did you see it closed?

A. I didn't look. I just took the word of my superintendent that he had it closed.

Q. Did you remain at the well?

A. Yes, I was there a while.

Q. Did all of the mud kick out of the hole, do you know?

A. Well, that I wouldn't know. I imagine it all kicked out and then maybe more—I don't know, I don't know what kicked out, how much mud kicked out. That is something I don't know because I didn't see it.

Mr. Bourquin: With the exception, your Honor, of matters of records that I think may be covered without the presence of the witness, that is all.

The Court: We will take the morning recess at this time, ladies and gentlemen. Please bear in mind the admonition of the court.

(Recess.) [209]

Mr. Bourquin: Your Honor, I would like to just further put in evidence the log page for December 1 and December 2, 1944, as Government's Exhibits next in order.

The Court: Very well.

(Thereupon the log pages in question were received in evidence and marked Plaintiff's Exhibits O and P, respectively.)

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Bourquin): Say, Mr. Faria, you testified yesterday that you had brought in additional casing on the property there in 1944?

A. I bought additional casing, yes.

Q. Did you put it on the property?

A. No.

Q. Did you take it to the property?

A. No.

Q. What did you do with it?

A. Well, I had it all bought and then we were served with the notice.

Q. What did you do with it?

A. I left it at the place where I bought it, I left it there. It was there and I was ready to move it over there, and we got a notice that we had to leave from the Government.

Q. Where did you buy it?

A. I bought it in Rio Vista.

Q. You bought it in Rio Vista. Did you ever take delivery of it? A. No.

Mr. Bourquin: That is all.

I would like these Johnson tests that Counsel was good enough to give me the reports of to be marked Government's Exhibits for identification, your Honor.

Mr. Scampini: There was some correspondence there and, [210] Counsel, do you want that marked?

Mr. Bourquin: Bound together.

The Court: You'd better identify that.

Mr. Bourquin: I will see if they have any bearing.

(Testimony of Joseph Faria, Jr.)

The Court: You already put one in evidence for October 27, so you'd better identify this in some way by dates.

Mr. Bourquin: Was that the test ticket for that, a test ticket and chart for the test ticket dated November 28, 1943?

Mr. Scampini: Well, there is only on October 5, 20 and 27, as far as I know.

Mr. Bourquin: We will ask, we will put in evidence, your Honor, if we may, the test ticket for October 28, 1943, by the M. O. Johnson Oil Field Service Corporation. The one for October 27 is already in with the chart.

The Court: Very well.

(Thereupon the test ticket for October 28, 1943, was received in evidence and marked Plaintiff's Exhibit Q.)

Plaintiff's Exhibit Q appears on page 1278.]

Mr. Bourquin: There is no chart attached to the test ticket of the 28th. We will offer as well in evidence the charts of the M. O. Johnson Oil Field Service Corporation for dates October 5, 1943, another October 20, 1943, and third, October 21, but by information below it is apparently 1943; three in number without test tickets on any of them.

The Court: Very well.

(Thereupon the charts in question were received in evidence [211] and marked Plaintiff's Exhibits R, S and T, respectively.)

(Testimony of Joseph Faria, Jr.)

[Plaintiff's Exhibits R, S, and T appear on pages 1279-1280-1281.]

Mr. Bourquin: That is all from the witness, your Honor.

Redirect Examination

By Mr. Scampini:

Q. Mr. Faria, during the course of your cross-examination, in answer to the questions of counsel on the other side, you testified, if I remember correctly, that approximately 252,000 shares of one dollar par stock were sold to the public; is that correct? A. Yes.

Q. Other than that, in addition the 62,500 shares which had been escrowed by the Corporation Commissioner under the original permit to be issued to you in exchange for the leases; is that right?

A. Yes.

Q. Were all those two hundred fifty-two odd thousand shares sold for cash? A. Yes.

Q. At one dollar a share? A. Yes.

Q. Did the corporation receive the money, the consideration for the sale of the shares completely or less the commission; did the corporation receive payment for all these shares less commission?

A. Yes, it received all the returns from the payments for the shares. They received all the money, the entire amount of money; they received all of that.

Q. Less the commission?

(Testimony of Joseph Faria, Jr.)

A. Not less the commission. They money was all delivered to it, the entire amount.

Q. The entire amount? A. Yes. [212]

Q. Did Cal Bay Corporation at any time from its incorporation to the present time have any other activities or properties, other than the leasehold estates and assignments in this well?

A. The Cal Bay Corporation didn't have any other property.

Q. Did is engage in any other transactions of any kind or character? A. No.

Q. Did any of the officers or directors draw any salaries from the corporation at any time?

A. No.

Q. Did you draw any salary or compensation at any time? A. No.

Q. Where did all of the money which the Cal Bay Corporation received from the sale of these shares go to? A. It was spent in this well.

Q. In this well. Was that amount of money sufficient to cover the cost of drilling that well?

A. No, sir.

Q. Did you have to advance the balance to the corporation?

A. Yes, I advanced money.

Q. Is that the sum of money which the corporation now owes you? A. Yes.

Q. How many stockholders did you say there are in this company?

A. Approximately six hundred thirty-two.

(Testimony of Joseph Faria, Jr.)

Q. With respect to the property which is owned by John Faria, I think that is his name, John S. Faria, and which is identified on the map which has been marked as Exhibit for Identification No. 12 and which is identified as Parcel 56 in the [213] Complaint on file, can you state in what location that piece of property lies in relation to the structure upon which the well was drilled?

Mr. Bourquin: Just a minute.

The Witness: In the fault——

Mr. Bourquin: I want to object to it on the ground it has not been shown that this witness is qualified to express that. I afraid it is going to open up a line of inquiry of the witness, and I don't think he is qualified.

Mr. Scampini: Counsel on the other side asked the witness some questions that he answered, that he did not like the property, that he had some reason why he did not like the property.

Mr. Bourquin: He said he did not get it, either.

Mr. Scampini: No, I think he said he did not like, he did not go after it. That is what he testified to and he had his reason for not going after that piece of property.

The Court: The question you asked calls for his opinion as an expert. I don't think you would be foreclosed from going into the matter that Counsel opened up, but I don't think the proper foundation is laid to qualify the witness.

Mr. Scampini: I will ask this question—I as-

(Testimony of Joseph Faria, Jr.)

sume that your Honor's ruling is the objection is sustained?

The Court: Yes.

Mr. Scampini: I will ask you this question: Did you [214] have any discussion with your geologist in respect to the property of John S. Faria at the time when you were acquiring these leases; answer "Yes" or "No." A. No.

Q. Did you have any discussion with Bud Hildebrand? A. Yes.

Q. Did Mr. Hildebrand and you decide not to go after that piece of property? A. Yes.

Q. With reference to the fence, is there anything dividing the property of John S. Faria from the property of Mary Faria, Mae E. Dutra Roche and Edward Faria? A. Yes.

Q. Is there anything else that divides that property from the properties of these parties; is there anything else to your knowledge that divides the property of John S. Faria from the property of Mary Faria? A. The fence.

Mr. Bourquin: We submit, your Honor, the map produced by the defendants themselves shows that nothing divides the two properties except the imaginary line which the law draws between the ownerships, and we submit the question is—we object to it.

The Court: You mean, is there any physical mark?

Mr. Scampini: Yes.

Mr. Bourquin: No foundation laid.

(Testimony of Joseph Faria, Jr.)

The Court: I don't see any objection. Counsel says he is inquiring as to whether there are any physical markers.

Mr. Scampini: I will withdraw the question.

Q. Are there any physical indications?

A. Yes.

Q. What are those physical indications dividing the properties?

Mr. Bourquin: That calls for the witness's opinion and conclusion. What does "indications" mean? we object to it.

The Court: There may be markers of some kind on the surface, I don't know. You are not referring now to an oil, alleged oil structure underneath that called for his opinions?

Mr. Scampini: I am referring to a marker which is very definitely on the property and which reflects on the property in respect to it as potential oil or gas land and visible to the naked eye and can be observed by anyone who has had any experience in the oil or gas business.

The Court: I will overrule the objection. He may describe what he saw there.

The Witness: Between the properties there is—nearby the line there, there is the gas seepage and the vegetation in the spring will burn due and caused by this gas coming through the ground.

Mr. Scampini: In respect to that—perhaps I did not make myself clear—are there any physical indications on the surface of the property dividing the property of John S. Faria from Mary Faria's

(Testimony of Joseph Faria, Jr.)

property, which led you not to go after the John S. Faria lease? A. Yes.

Mr. Bourquin: I think we are getting back to the same place. [216]

The Court: I think that calls for his opinion and conclusion. He may state what he saw.

Q. (By Mr. Scampini): Can you state what is apparent on the surface of the property?

A. The vegetation being burned out in the spring.

Q. In answer to Counsel's question on Page 159 of the transcript, you were asked the following question, Line 18:

“You never concerned yourself with that. Although the property lay alongside of the Parcel 59 that you feel has such possibilities?

“A. I would not say so. I just didn't care for that property, and that is the reason I never bothered with it.”

What was the there about the property that led you not to go for it?

A. On account of the seepage——

Mr. Bourquin: It would be considered, your Honor, an expression of opinion, and we move the answer be stricken.

The Court: It may go out.

Mr. Bourquin: That is all, your Honor.

Mr. Scampini: No questions, your Honor.

The Court: That is all.

Mr. Scampini: I am going to call—I was plan-

ning to call Mr. Norris next, but I have an expert from the Dow Chemical Company here. May I call him at this time?

The Court: Yes. [217]

ROBERT P. OBRECHT

called as a witness on behalf of the defendants; and having been first duly sworn, testified as follows:

The Clerk: Will you state your name?

A. Robert P. Obrecht.

Direct Examination

By Mr. Scampini:

Q. Mr. Obrecht, what is your profession?

A. I am a chemical engineer with the Dow Chemical Company, Pittsburg, California.

Q. How long have you been with the Dow Chemical Company? A. Ten years.

Q. At what plant of the Dow Chemical Company do you work?

A. The Great Western Division in Pittsburg, California.

Q. What is the activity, or what does the Dow Chemical Company do?

A. Dow Chemical Company is a producer of caustic sodas, ehlorine, various insecticides and xanthates.

Q. From what school did you graduate?

A. Colorado School of Mines.

Q. What degree did you receive?

A. Metallurgical engineer.

(Testimony of Robert P. Obrecht.)

Q. After graduation, where did you go, or what did you do?

A. I had two jobs prior to my work with the Dow Chemical Company; one was as lab technician for the American Smelting and Refining Company in Amarillo, Texas; the other was construction inspector, Denver Board of Water Commissioners, and my work with the Dow Chemical Company began in 1937. [218]

Q. With the Dow Chemical Company, what are the scope of your activities or duties?

A. Well, they have been varied during the course of my ten years with the company.

Q. A little louder, please. We cannot hear you.

A. They have been varied during the course of my ten years with the company.

Q. Well, describe them.

A. I have been in the Research Department of the company, Research Development, since 1937, since my start with the company. The first few years concerned qualitative and quantitative analyses and related to the company's work, and since 1939, I have been engaged in chlorination production work for and by the company, in which we chlorinate various hydro-carbons, a business in which the company is actively engaged.

Q. We cannot hear you?

A. Chlorination of organic compounds is a branch of the company's activities with which I have been engaged since 1939.

(Testimony of Robert P. Obrecht.)

Q. In the course of your duties since 1939, have you had occasion to make analyses of the constituents of natural gas? A. Yes.

Q. I refer you to October 23, 1943. Did you or your company have occasion to make an analysis of certain natural gas for the account of Cal Bay Corporation or Joseph Faria? A. Yes. [219]

Q. Will you please state who requested you to make the analysis?

A. Our company, of course, is interested in natural gas exploration activities in that region, being a large consumer of natural gas, and it was probably on my part that the company took interest in this particular operation, and on seeing activity take place out there, and hearing various rumors and reports about it in the town of Antioch and nearby, where I reside, I contacted or, rather, I was contacted as the result of showing some interest in the operation by Mr. Faria. He was interested in having me obtain a sample of gas from this well on a certain date that some operation was to be made, and on which a gas sample could be obtained.

Q. Did you visit the well being drilled by Cal Bay Corporation?

A. Yes, only to obtain the sample.

Q. How many miles from the Dow Chemical Company's plant was the well?

Mr. Bourquin: We object to that as incompetent, irrelevant and immaterial.

The Court: What is this witness being put on

(Testimony of Robert P. Obrecht.)

for? To give the result of a test and a report to someone?

Mr. Scampini: Yes.

The Court: Ask him for it.

Q. (By Mr. Scampini): Did you obtain a sample of the gas being produced from the well?

A. Yes. [220]

Q. On what date did you obtain it?

A. A few days prior to October 23rd. I don't know exactly the date.

Q. How did you obtain the sample of gas?

A. By the conventional methods of collecting the gas and water, preventing the contamination of the sample by air.

Q. From what part of the well did you obtain the gas?

A. I obtained the sample from a pipe line which came from the well head.

Q. How much of a sample did you collect?

A. A five-gallon sample.

Q. Then what did you do with that gas?

A. That sample was taken to the Pittsburg laboratory and analyzed for consistency.

Q. What tests did you subject it to?

A. Naturally knowing or assuming the gas——

The Court: Can't you tell us what is the name of the test? Does it have some name?

A. Yes, the analysis is an Orsat analysis.

Q. (By Mr. Scampin): Is that an orthodox or usual method of analyzing the constituents of natural gas?

A. Yes.

(Testimony of Robert P. Obrecht.)

Q. As a result of the test what did you find the sample to consist of?

A. Referring to the notes kept on the analysis, there was no oxygen, CO_2 , nor——

Q. A little louder, Mr. Obrecht. We can't hear you. Perhaps some of the ladies and gentlemen of the jury can't hear you. [221]

The Witness: Pardon me. There was no oxygen, carbon dioxide, or carbonmonoxide present. Ethane content was .5 volume per cent; methane was $94\frac{1}{2}$ volume per cent; and the balance nitrogen.

Q. Referring to methane, will you please state what that is?

A. Well, that represents an Orsat analysis of

Q. Yes, but what is methane in the element of gas? What is it considered to be, methane?

A. Methane is a combustible hydrocarbon.

Q. Does that mean natural gas, in plain words?

A. Natural gas, widely-known, consists largely of methane. The composition may vary, but more generally all natural gas used industrially and domestically consists of at least 90 per cent methane.

Q. In your experience as a chemical engineer, will you please state what was the quality of the gas analyzed by you in respect to its BTU content?

A. I have not calculated it. The BTU equivalents of methane and ethane are known. From my experience with BTU calculations on natural gas the sample taken.

(Testimony of Robert P. Obrecht.)

analyses I would estimate this to be around a thousand BTU's.

Q. In the general scheme of things, and based upon your experience, is that considered to be a gas of good quality? A. Yes, yes.

Q. Did you submit a report of your findings to Mr. Joseph Faria?

The Court: He just wants to know whether you did.

The Witness: I would like to refer to my notes, please. [222] I have no copy of the report in my file, here.

Q. (By Mr. Scampini): I will show you here a letter, and I will ask you if you will look at it and state whether or not you recognize it.

A. Yes, that is my handwriting.

Q. This is a report that you made to Mr. Joseph Faria, concerning the results of your analysis of this gas, is that right? A. Apparently, yes.

Mr. Scampini: I offer it in evidence as our exhibit next in order, your Honor.

(The report in question was thereupon received in evidence and marked Defendants' Exhibit 20.)

[Defendants' Exhibit 20 appears on page 1247.]

Q. (By Mr. Scampini): Was the quality of the gas sampled by you obtained from the Faria well a gas of good commercial quality?

A. Definitely, yes.

(Testimony of Robert P. Obrecht.)

Mr. Scampini: No further questions.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Obrecht, did you make the examination on your account, or was it an examination that you made on behalf of the Dow Chemical Company?

A. I discussed the possibility of getting a sample of the gas for our own company's use with management——

Mr. Bourquin: Excuse me.

The Court: Can't you answer the question? Is this a personal report of yours, or is it a report of the Dow Chemical Company? "Yes" or "No."

The Witness: The report Mr. Scampini has in writing there is a personal report.

Q. (By Mr. Bourquin): Was it a test made by Dow, or made by Mr. Obrecht personally?

A. The test was made by Mr. R. D. Bernard.

Q. At the Dow plant? A. Yes.

Q. And you, of course, were familiar with it?

A. Yes.

Q. You knew his results were correct?

A. Yes, sir.

Q. And you found that the gas was a gas of good heat value? A. Yes.

Q. In other words, the quality of the gas was all right if they had enough gas there, is that it?

A. Yes.

Q. Does the test give us any indication of the volume of the gas there?

(Testimony of Robert P. Obrecht.)

A. Not as far as I was concerned, no.

Q. In other words, the test was a test of what the gas, irrespective of the volume, entirely, represented in utility; was it a good heat value, or not?

A. In terms of chemical analysis, yes.

Q. I take it that what Mr. Scampini has introduced here as Plaintiff's Exhibit 20, your letter, that was your report, was it? A. Yes.

Q. You did not make any earlier report or other written report, did you? A. No, I did not.

Q. When did you say you took the sample? Your letter says the sample was taken from the well on October 27th. Have [224] you some different record?

A. The notebook from which the entries were made is merely dated 10/23/43. I have no recollection of the record of the date that the sample was obtained. It would have been within a few days of that date.

Q. Of October 23rd? A. Yes.

Q. You said you went and took the sample yourself? A. Yes.

Q. And you said you took it at the wellhead?

A. I took it at a distance some 150 feet from the head of the well out of a pipe which issued from the wellhead.

Q. The well then was under test, was it, when you were there? A. Yes.

Q. The Johnson tests were being made?

A. I am not familiar with the petroleum methods. Some test was being made, yes.

(Testimony of Robert P. Obrecht.)

Q. So you simply tied onto their pipe and got your gas; that is all you wanted, and you went back and tested it? A. Yes, sir.

Mr. Bourquin: I think that is all from the witness.

Mr. Scampini: That is all.

Mr. Bourquin: I will ask him one further question.

Q. Have you a note there of the date that the test was made by the gentleman you mentioned?

A. Yes.

Q. What date did he test that?

A. That is 10/23—October 23, 1943.

Q. There must be some mistake either on your part or your letter. You have no record of it being tested after October 27th? [225]

A. That is the date given in this notebook, which is company property and company records.

Q. May I see it, please?

A. Yes, you may. Here is the entry.

Q. Where is the date?

A. Right here (indicating), 10/23/43, and then it jumps to 11/1. He may not have dated this. It could have been the 27th.

Mr. Bourquin: I see.

Mr. Scampini: That is all, Mr. Obrecht.

The Court: I thought we had better use the time, Mr. Scampini. This case seems to be dragging. It takes too much time to elicit simple information.

Mr. Scampini: I was going to call a short witness.

The Court: Whatever you wish, as long as you can make use of the time.

MARK BEAVER

called as a witness on behalf of the Defendants;
sworn.

The Clerk: Will you state your name to the court and jury?

A. Mark Beaver.

Direct Examination

By Mr. Scampini:

Q. Mr. Beaver, what is your usual business or occupation?

A. Well, common laborer is my occupation now. Working in an oil field up to eight years ago, and I had a short time working in—— [226]

Q. How long did you work in oil fields?

A. I commenced in the oil fields when I was eighteen years of age and I worked in the oil fields until eight years ago.

Q. Where did you work in oil fields?

A. From Ramona, Kansas, plum across the State of Oklahoma into Texas.

Q. What did you do while you worked in the oil fields?

A. Dressed tools and cable two, in drilling wells.

The Court: You were the dresser of the tools and worked on cable two in well-drilling operations?

A. Yes, sir.

(Testimony of Mark Beaver.)

Q. (By Mr. Scampini): What else did you do while working in the oil fields besides dressing tools?

A. I followed that eight years and then I went into cable two, what we all call cable two; took them by the wells and drilled a well, and that is what we call screwing——

Q. Just a moment. The reporter has to take all this down. Did you do anything else besides dressing tools in those 30 or 40 years that you worked in the oil fields?

A. I packed a drill for 25 years on table two after I quit dressing tools.

Q. Did you go to work for the Cal Bay Corporation, with Joe Faria, sometime in 1944?

A. Sure did.

Q. When did you go work for them?

A. I couldn't tell you just exactly the date now. 1944.

Q. Approximately?

A. In the summer, somewhere around there, I don't remember.

Q. The summer of 1944?

A. Or in the fall, yes. [227]

Q. Or the fall? A. Yes.

Q. Were you working there on November 29, 1944? A. I think so.

Q. What were you doing?

A. Firing the boilers.

Q. Firing the boilers? A. Yes, sir.

(Testimony of Mark Beaver.)

Q. Did you observe anything on November 29, 1944, at or about eleven o'clock a.m., at the well?

A. I sure did.

Q. What did you observe?

A. Well, I observed that the boilers was working——

Q. Take it easy.

The Court: Will you speak a little louder? It is a little difficult to understand you, Mr. Beaver. The jury have to hear. Will you try to speak a little louder and a little bit slower?

The Witness: I guess so.

The Court: Try that.

The Witness: I sure did know something unusual happened, yes.

Q. (By Mr. Scampini): Tell us what you observed.

A. Well, this well blew out and blew mud, oil, sand and gas 100 feet. The sand went up the rig and the gas went over across to the boilers.

Q. How far from the well were you stationed when this happened?

A. I suppose about 75 yards the boiler was from the rig.

Q. And did you hear any noise or roaring at the well? [228]

A. Noise of what?

Q. Roaring?

A. Yes.

Q. Well, describe what you heard and how it felt.

A. Well, when it blew in, it blew this mud, sand and dirt 100 feet up the rig, and then it would

(Testimony of Mark Beaver.)

choke off and break loose again. You could hear it plum down to the boiler just belling and blowing.

Mr. Bourquin: I didn't hear the last of what he said.

The Court: Read the answer, Mr. Reporter.

(Answer read.)

Q. By Mr. Scampini): How did the earth feel under your feet?

A. It didn't shake hard enough to scare a man.

Q. I can't hear you, Mr. Beaver. You have got your fingers in front of your mouth. Go ahead and describe just exactly the sensations you felt.

A. No, I don't think it shook the ground down to the boiler, I suppose. You could hear it plum down there, jarred the ground, not too much, shaking some.

Q. When you saw this what did you do?

A. Well, when I got my boilers under control I walked over there, up to the rig, and back to my boilers.

Q. And when you got to the rig who did you see there?

A. Well, mud and sand.

The Court: He means who did you see.

Q. (By Mr. Scampini): Who did you see?

A. Oh, who did I [229] see?

Q. Yes.

A. Mr. Freel wasn't there—the superintendent, I believe, Mayes, and the crew.

Q. And the crew? A. Yes.

(Testimony of Mark Beaver.)

Q. And what did you see on the derrick Describe what you saw.

A. On the derrick was mud and sand four to six inches deep.

Q. What else did you see?

A. That is all I seen.

Q. Did you pick up any of the sand?

A. Yes.

Q. What did you do with the sand?

A. I took it in my mouth and tasted it.

Q. Is that a common practice among you workers in the oil fields?

A. I don't know what anybody else practices; I practiced it.

Q. What did you taste when you tasted that sand?

A. Oil, sand—oil and gas in the sand.

Q. Did you rub the sand in your hand?

A. No.

Q. What did you do with the sand that you tasted?

A. Well, I didn't swallow it. I threw it down on the ground.

Mr. Bourquin: What was the answer of the witness?

The Court: He said he didn't swallow it. He threw it away.

Q. (By Mr. Scampini): While you were stationed at the boilers you say you saw gas coming from the well?

(Testimony of Mark Beaver.)

A. The gas blew out and threw mud up on the rig, 100 feet high on the rig.

Q. How could you tell it was gas?

A. Could see it with your eyes. [230]

Mr. Scampini: No further question.

Cross-examination

By Mr. Bourquin:

Q. Mr. Beaver, you were the fireman, were you?

A. Well, I was getting by at it, yes.

Q. Did you have anything to do with the mixing of the mud? A. No, sir.

Q. Or the circulating of it? A. No, sir.

Q. You fired the boilers? A. Yes, sir.

Q. And in that respect your situation was away from, let us say, the roughnecks' operations up there? A. Yes.

Q. You went to work there in 1944, you say?

A. Yes.

Q. Who was your driller first that you worked under, the superintendent?

A. Joe Freel was superintendent. I don't remember what the driller's name was, at all.

Q. Did you work there when J. M. Anderson had his crew on? A. Working daylight?

Q. Yes.

A. Yes, I roughnecked a few days under him.

Q. You worked for a while under J. M. Anderson in July and August?

A. I think a couple of days is about all.

Q. When his crew left you stayed on, is that it?

(Testimony of Mark Beaver.)

A. When his crew left I weren't working. When they started the well again and went to work, I did.

Q. When they started to work on the well after Anderson left, you came back and started to work firing?
A. With a new crew, yes. [231]

Q. You were there the day the well blew out?

A. Yes, sir.

Q. That was on what shift?

A. It was from eight o'clock to four o'clock in the evening.

Q. Eight o'clock to four o'clock?
A. Yes.

Q. What time was it that the thing blew out?

A. Well, as best I remember, a little after eleven o'clock.

Q. Did it continue to blow out for a while?

A. Yes, quite a while.

Q. How long?

A. Well, I would judge to the best of my knowledge possibly an hour, an hour and a half, something like an hour and a half or two hours, as best I could guess at it. I had no timepiece, you know.

Q. You say you observed it from your station. It blew up on the derrick, and then it would choke off and then blow up again, is that right?

A. Yes, that is right.

Q. That is the kind of action you say occurred. It was not a continuous blow, but it would blow up, choke off, and then kick up again?

(Testimony of Mark Beaver.)

A. That is right. When it first blowed in, it blowed quite a while, and then the pressure was shot off by something, and then it came back again and blowed for quite a while steady.

Q. What did you mean when you said on direct examination that you saw it blow up, choke off, and blow up against, and went on like that?

A. What did I see when it did that?

Q. What did you mean when you said that?

A. I meant the pressure [232] would check the strength of the gas, oil, or whatever it was—gas, and then would break loose again and come again. That is what I said.

Q. I would pop up, choke off, and pop up again?

A. Yes, a couple of times.

Q. And that went on for several times?

A. A couple or three times, and then boiled pretty steady.

Q. You say you have been a tool dresser in the oil field for eight years before you went to work over there?

A. I sure was.

Q. You are not interested in the property, Mr. Beaver?

A. I have a small stock in it.

Q. Oh, you have a stock interest?

A. Yes.

Q. Where were you living when you worked there?

A. I was living in Brentwood.

Q. How long had you been living in Brentwood?

A. Three years.

(Testimony of Mark Beaver.)

Q. They sold you some stock, did they? How did you acquire your stock?

A. How did I buy it?

Q. How did you get your stock?

A. After this well blew in I bought 100 shares in it.

Q. You acquired your stock after the blow-out?

A. Yes, sir.

Q. Not before? A. No, sir.

Q. Where do you live now?

A. Chowchilla, California.

Q. What are you doing now?

A. Camp boss down there for a ranch. [233]

Mr. Bourquin: That is all.

Redirect-examination

By Mr. Scampini:

Q. Mr. Beaver, did anyone try to sell you any stock? A. What?

Q. Did Joe Faria or anybody try to sell you any stock? Did Mr. Joe Faria or anybody else try to sell you any stock? A. No.

Q. Did you go after the stock, yourself?

A. Yes, sir.

Q. And you went after the stock after you saw the developments at the well that you have described, isn't that right?

A. That is right.

(Testimony of Mark Beaver.)

Q. And how much did you pay for the stock?

A. I paid a dollar a share.

Mr. Scampini: That is all. No further questions.

Mr. Bourquin: No questions.

The Court: We will take the noon recess at this time, ladies and gentlemen, and will resume at two o'clock. Please bear in mind the admonition of the court.

(A recess was thereupon taken until two o'clock p.m.) [234]

Afternoon Session, January 24, 1947, 2:00 p.m.

The Court: The jurors are all present. You may proceed.

Mr. Scampini: May I see the log, Mr. Clerk. At this time, may it please the Court, I offer as Defendants' Exhibit next in order the log which has been marked as Defendants' Exhibit 17 for Identification. I will ask it be admitted in evidence as our exhibit next in order.

Mr. Bourquin: We have no objection.

The Court: Very well.

(The log in question, Defendants' Exhibit 17 for Identification, was thereupon received in evidence.)

Mr. Scampini: May I see the last exhibit, the letter of Mr. Obrecht? In this morning's session

we offered and there was admitted into evidence this—it says “Plaintiff’s Exhibit No. 20”; it should have been Defendants’ Exhibit 20, your Honor. We are defendants in this case instead of plaintiffs.

The Court: That is the report of the witness Obrecht?

Mr. Scampini: Yes. I overlooked reading the report to the Jury. It is very short. I ask permission at this time to read it to the Jury.

The Court: Very well.

Mr. Scampini (Reading): [235]

“R. P. Obrecht
220 Fourth St.
Antioch, Calif.
November 4, 1943

“Mr. Joe Faria
c/o E. M. Woodman
Antioch, Calif.

Dear Mr. Faria:

“An Orsat analysis of a sample of gas taken from your well on October 27, 1943 was found to be:

| | |
|-------------------------------------|------|
| CH ₄ | 94.5 |
| C ₂ H ₆ | 0.5 |
| N ₂ | 5.0 |
| O ₂ CO ₂ & CO | Nil |

“I am enclosing an extra copy which you may forward to Mr. Byron Norris.

Yours very truly,

R. P. OBRECHT.”

WILLIAM HERBERT MAY

called as a witness on behalf of defendants; and having been first duly sworn, testified as follows:

The Clerk: Will you state your name?

A. William Herbert May.

Direct Examination

Q. (By Mr. Scampini): Mr. May, where do you reside? A. Long Beach, California.

Q. What is your business or occupation?

A. Oil driller.

Q. How long have you been an oil driller ?

A. I have been an oil driller possibly ten years.

Q. What were you before being an oil driller?

A. Driller's helper.

Q. How long were you a driller's helper?

A. Off and on, for twelve years.

Q. Before being a driller's helper, what were you?

A. I worked at what they call roustabout work in the oil fields.

Q. How long were you a roustabout?

A. I imagine a couple of years, two years.

Q. Before being a roustabout, what were you?

A. Well, up to that time I was a schoolboy.

Q. Would you say that since you were a school-boy up to the present time you have been working continuously at the occupations in connection with drilling and working on oil wells, is that right?

A. Yes.

(Testimony of William Herbert May.)

Q. In the course of your activities, you have been a driller in the last ten or twelve years, can you state how many wells you have brought in to successful completion?

A. I imagine, I would say approximately twenty.

Q. In what fields, oil or gas fields in California, have you worked during all these years?

A. In the San Joaquin Valley and Wilmington area and Seal Beach and Huntington [237] Beach.

Q. Have you ever worked for Cal Bay Corporation? A. Yes.

Q. Do you know Mr. Joseph Faria?

A. Yes.

Q. When did you go to work for Cal Bay Corporation? A. September 27, 1944.

Q. In what capacity?

A. Drilling Superintendent.

Q. At what well? A. Faria No. 1

Q. Located on the properties of the Cal Bay Corporation in the Pittsburg hills? A. Yes.

Q. How many towers were working on the well when you became drilling superintendent?

A. Three.

Q. Will you please state what you first observed in the well when you first undertook the duties of drilling supintendent?

A. There was a bit and a drill collar lodged in the bottom of the casing.

Q. At what depth was the casing, what depth of the casing was the drill collar lodged?

A. I would have to refer to the log, I don't know.

(Testimony of William Herbert May.)

Q. I show you Defendants' Exhibit 17, which is the log of the well.

A. Forty—I can't find that.

The Court: What day are you referring to?

Mr. Scampini: October 7 and 8.

The Court: It may be one of the leaves that were removed.

The Witness: It gives the tenth to the fifteenth. After I went to work there I know the approximate depth of that. [238]

Q. (By Mr. Scampini): The approximate depth? A. 4,100 feet.

Q. Will you please describe for the benefit of us laymen and the Jury what you mean by a collar being stuck?

A. This collar is a weight used on top, between your bit and the drill pipe. It was more or less like a counterbalance; it gives a stabilization. This bit lodged in the drill pipe and evidently in this case when they were digging below this casing, when they came to the bottom casing, it lodged in there, in the pipe, and it wouldn't come out, wouldn't go up or down.

Q. What did you do for the purpose of loosening that drill collar and pipe?

A. Well, we got fishing tools, what they call fishing tools, there is a socket that goes in and reaches over the pipe with the drill collar, and tried to get it loose.

Q. Were you able to get it loose?

A. No.

(Testimony of William Herbert May.)

Q. When you found you couldn't get it loose, what next did you do?

A. We decided on a whipstock, make a new hole.

Q. Were you successful in so doing?

A. Yes.

Q. You started to drill down alongside the old hole?

A. Yes.

Q. As you proceeded to drill, did you take any cores of the formation?

A. Yes.

Q. What, if anything, did you observe in the core?

A. Well, in going through a hard formation there isn't much use to do any coring. When we would hit a soft formation and we took [239] cores there at a soft spot. We took at least three or four cores in the process of drilling while I was there.

Q. Will you please state what you observed in the course of drilling the well after you whipstocked in the nature in the nature of oil or gas reflections?

A. There was gas pressure increasing the deeper we went. There was no oil indication until the well blew in.

Q. When you say the gas pressure increased the deeper you went, how would you know the gas pressure was increasing?

A. We would have to increase the weight of our mud to keep the well from blowing out while we were working.

(Testimony of William Herbert May.)

Q. What weight of mud were you working with when you first started to drill?

A. 83 or 84 pound mud.

Q. As you went deeper, to what weight did you increase it? A. 115 pounds.

Q. In your experience as a driller of wells, can you state whether or not a weight of 115 pound mud is a high or a normal or a low weight of mud?

A. A very high weight of mud.

Q. How much pressure, bottom-hole pressure of gas is 115-pound mud equivalent to?

A. 4,350 feet. I cannot remember that myself, although the Baroid man was there. That can be figured out. At that time he figured the bottom-hole pressure was at about thirty-six hundred.

Q. Is that in your experience a high pressure found at that depth? A. Yes. [240]

Q. What is it indicative of?

A. Well, it is indicative of very high gas pressure.

Mr. Bourquin: What the Baroid man told him I ask be stricken as hearsay. I thought he was testifying as to his observations. He is apparently giving us a recital of something he was told.

The Court: Well, it is hearsay.

Mr. Scampini: It may go out.

The Court: Well, I am not just sure if that is—if that is a part of the daily activities of the witness he might have sufficient knowledge of it to know himself as a result of his own activities.

(Testimony of William Herbert May.)

Mr. Scampini: I will say we will have the Baroid man here.

The Court: I will overrule the objection.

Q. (By Mr. Scampini): As you approached 4,950 feet in depth, can you state whether or not the formation through which you were drilling, whether it was hard or soft formation?

A. 4,950?

Q. Yes. A. Very hard.

Q. As you approached the 4,950-feet formation, can you state what happened of your own observation, in the nature of the tightness of the formation encountered?

A. We encountered that same formation until the depth of around 4,965, I believe.

Q. When you approached 4,965, what did you observe?

A. We observed the drill again making hole much faster than it [241] had before.

Q. Did you observe any increase in the revolutions of the rotary table? A. Yes.

Q. How much of an increase would you say you observed?

A. I would say, around 25 or 30. That is from being in softer digging.

Q. As you penetrated this softer formation, what, if anything, did you observe?

A. We observed higher gas pressure immediately.

Q. How would that manifest itself?

A. The well would start surging.

(Testimony of William Herbert May.)

Q. What did you do to counteract it?

A. We would increase the weight of the mud.

Q. At that place can you state to what weight you increased it?

A. 115 pounds, that was the highest.

Q. How long did that keep up?

A. That kept up until we lost circulation.

Q. When did you lose circulation?

A. We lost circulation after the well blew in, blown in.

Q. On or about November 8, 1944, did your pipe stick? A. Yes.

Q. Do you know how it was stuck?

A. Yes.

Q. What happened?

A. At that particular time we were digging in some heaving shale, caved in on it, caved in on the bit and stuck the pipe. [242]

Q. What did you do to loosen the pipe?

A. Spotted some oil around the bit.

Q. What do you mean by spotting oil?

A. Pump a certain amount of oil down the pipe and let it go up, around and outside of the drill pipe and leave it soak.

Q. What effect has that got?

A. That loosens the formation.

Q. Is that a normal practice in the drilling of wells? A. Yes.

Q. Nothing unusual about it?

A. No. It happens lots of times.

(Testimony of William Herbert May.)

Q. Do you know how many barrels of oil you spotted? A. Yes.

Q. How many?

A. At that particular time?

Q. Yes. A. 25 barrels.

Q. Do you know what gravity oil you poured into the well? A. Yes.

Q. What? A. 14 gravity, fuel oil.

Q. How long did you let the oil remain?

A. Eight hours.

Q. Then what did you do?

A. Pulled the pipe out.

Q. The pipe came loose? A. Yes.

Q. Did you renew drilling operations?

A. Yes.

Q. What happened to that oil that you poured into that well, if you know, what happened to it in this case?

A. It was circulated out of the well. When you start circulation again, [243] yes, the oil that we put in there, there was a certain amount of oil and when it comes out you can see it plainly. You close your ditch and open the gate and blow it down the waste ditch, get rid of it.

Q. It doesn't come back into the mud pit and from the mud pit back into the well? A. No.

Q. It goes down the hill? A. Yes.

Q. How long a period of time does it take to circulate 25 barrels of oil out of the well?

A. In this particular case it wouldn't take over an hour.

(Testimony of William Herbert May.)

Q. You proceeded then to immediately drill. Did your pipe get stuck again? A. Yes.

Q. Approximately when was it, if you remember?

A. The pipe got stuck several times, as far as I was concerned, but sometimes we—it was not bad enough that we had to spot oil.

Q. Did you have to stop it any more?

A. Yes.

Q. When?

A. That was November, I think the 27th.

Q. What did you do?

A. We spotted oil.

Q. How many barrels of crude oil?

A. Eight.

Q. Eight barrels. What gravity oil?

A. Same gravity, 14, fuel oil.

Q. How long did you allow it to remain?

A. Eight hours.

Q. What happened after that?

A. We circulated it out.

Q. Where did it go?

A. Down the waste ditch.

Q. Did it go back into the mud pit at all?

A. No. [244]

Q. How long did you think it would take to circulate eight barrels of crude oil out of the well?

A. That would be only a minute's difference from 25 barrels; it doesn't take much, it wouldn't take over ten minutes off.

(Testimony of William Herbert May.)

Q. Did you then continue drilling?

A. No.

Q. Were you able to loosen the pipe?

A. No.

Q. What did you do for the purpose of loosening the pipe?

A. We did most everything that we could possibly think of in the oil business to loosen pipe.

Q. Just describe what you did?

A. At this time we, well, as an illustration, I can give it this way: You have seen a dog that has something in its mouth and you pull on it and you notice how the dog will pull too. That is the same thing we do with a drill pipe, we pulled or twisted it and shoved down on it, everything you could think of to get it loose.

Q. Were you able to get it loose?

A. No.

Q. During all of this period of time, were you circulating through that well? A. Yes.

Q. Did you try closing the well in?

A. We had closed it in when you spotted oil.

Q. When you did close it in, it indicated pressure—— A. Yes.

Q. What pressure did that indicate?

A. That indicates that as soon as you close the well in your pressure would start up. In other words, the gas is forming in there, and wants to get [245] out.

(Testimony of William Herbert May.)

Q. Do you know about what pressure the indicator was when the well was closed in?

A. Yes.

Q. What pressure? A. 1,600 pounds.

Q. Was that high or low pressure?

A. It is high.

Q. What happened on November 29, do you recall, November 29, 1944, at ar about eleven o'clock a.m.?

A. Yes.

Q. Were you present then? A. Yes.

Q. Were you in charge of the operations at that time?

A. Yes.

Q. Were you there trying to loosen the pipe?

A. Yes.

Q. Please describe exactly what happened at that time?

A. Prior to this eleven o'clock, we had closed the well in and repaired our mud line. The mud line is—the pipe-line runs from your pump to the well and there was a hole came in and we couldn't pump, and so we had to close and went down to Concord, got a welder and he came back and welded the hole in the mud line.

Q. During this period of time the well was closed in, do you know what the pressure indicator showed?

A. Yes.

Q. How many pounds?

A. Same pressure, 1,600 pounds.

Q. Then was happened?

A. It hit the control valve and continued out and the well blowed out.

(Testimony of William Herbert May.)

Q. Please describe what you saw and what you did and what you mean by blowing out?

A. When a well blows out it means [246] that the gas pressure has formed in the bottom of the well and it blows all the fluid out, blow-out.

Q. At what depth were you to the bottom at that time? A. 4,995.

Q. Was that pit of 4,995 feet, or approximately that number of feet, was that filled with mud weighing 115 pounds at that time? A. Yes.

Q. Per cubic foot? A. Yes.

Q. What happened when the well blew out?

A. Well, it blows mud, oil and gas on top of the derrick.

Q. How do you know it was gas?

A. You could see it, smell it.

Q. Has gas coming out of a well under those circumstances and conditions any color?

A. Yes. It is blue, looks like, sometimes you have seen a Bunson Burner, the blue flame there. The gas looks almost that color.

Q. Did the well make any noise? A. Yes.

Q. Please describe what you observed in that respect?

A. The noise was very terrific while it was blowing; I couldn't say exactly how loud it is; probably as loud as the streetcars you hear running along here.

Q. Did you say you observed oil being thrown up into the air also? A. Yes.

Q. How do you know it was oil?

(Testimony of William Herbert May.)

A. We had about five thousand feet of tubing standing on the derrick; the wind was [247] blowing toward the tubing and it would go against the tubing and it would drop around down on the floor, very easily, and whatever obstructions on the derrick it would hit, it would fall down on the derrick floor. You could pick it up in a jar.

Q. In the course of your activities in the oil business you have become familiar with many different types and kinds of crude oil?

A. Yes.

Q. Are you familiar with the gravity of various kinds of petroleum?

A. I can come pretty close to it, yes. The oil that we put in to circulate our drill pipe loose was common, ordinary crude oil, about 14 gravity. This oil, I would say from my experience, was at least 25 gravity oil.

Q. How long did it take to bring the well under control? A. Two hours.

Q. Did the well blow continuously?

A. Yes.

Q. What did you do for the purpose of bringing it under control?

A. We closed our control head. We have a safety measure there, a control head. As soon as the well blowed out we released the pressure and we pumped mud in gradually until we built out mud up high enough that it would—it stopped flowing.

Q. Did you have a gas control head on the well? A. Yes.

(Testimony of William Herbert May.)

Q. When was that installed, if you know?

A. That was there when I went there. This particular control head that [248] we had there was called the Reagen Head. It is a large cylinder made out of heavy iron and inside the cylinder are some rubber, a large piece of rubber in there. It sets loose. The pipe comes down in between there and around the rubber; you pump water and that contacts against the drill pipe up tight and there isn't anything that is supposed to get up around the drill pipe.

Q. Were you able to shut off gas and oil from coming through this case control head?

A. Not completely, no. There was still a little coming out.

Q. In the meantime, were you building up the weight of the mud again? A. Yes.

Q. What next did you do?

A. Well, as soon as we got the well under control, as soon as that I saw Mr. Faria coming up the hill and I asked him if he was selling stock. He said yes. So I bought some stock.

Mr. Bourquin: We submit the conversation is outside of the——

The Court: Yes. Sustained.

Mr. Scampini: It may go out, your Honor, by stipulation.

Q. What did you do next after you had the well under control?

A. We kept trying to loosen the pipe.

(Testimony of William Herbert May.)

Q. Did Mr. Bradford appear on the scene at or about that time?

A. Yes. It was that day or a day later.

Q. Yes.

A. I don't know the exact date. [249]

Q. Are you able to give us an opinion as to the volume of gas that was coming out of that well during the two hours?

A. I can't give the exact amount, although there was a tremendous amount.

Mr. Bourquin: I ask the "tremendous amount" go out, your Honor.

The Court: Yes, that may go out.

Q. (By Mr. Scampini): Have you an opinion as to the volume in cubic feet per day?

A. No, I haven't.

Q. After Mr. Bradford appeared, what did you do for the purpose of trying to loosen the pipe?

A. We did anything Mr. Bradford told us to do. We succeeded in moving the pipe around a little bit; we didn't pull it up or down, but we twisted it some and by using some of Mr. Bradford's methods that are used in the oil fields we moved the pipe and immediately we lost circulation.

Q. Coming to that point, did you have circulation up to this point? A. Yes.

Q. When the pipe was moved, then you lost circulation? A. Yes.

Mr. Bourquin: We object to this as leading and suggestive. I make the objection seriously, because

(Testimony of William Herbert May.)

that is our thought on the matter. I think it should stand out. Let the witness testify to what he did. The question was purely leading.

The Court: Read the question. [250]

(The record was read by the reporter.)

The Court: I will overrule the objection. The question should be: After you moved the pipe, what happened then? It should not indicate what the answer should be.

Mr. Scampini: I will reframe the question. I will withdraw my former question.

Q. As soon as the pipe was moved, what, if anything, happened in respect to circulation?

A. We lost circulation.

Q. Were you able to regain circulation?

A. No. At that time we had Haliburton's cement wagon come there and they put over three thousand pounds pressure into the drill pipe to see if we could regain circulation, but we could not.

Q. Speaking of pressure, do you know how much pressure you applied to the control head for the purpose of closing the control head?

A. At this time we applied 1,000 pounds pressure.

Q. Five thousand?

A. One thousand.

Q. Will you please describe to the Jury and to us lawyers exactly how circulation in the course of drilling an oil well is handled?

A. Your drill pipe is hollow and we pump mud through the drill pipe, from a pit through the drill

(Testimony of William Herbert May.)

pipe, goes down through the drill pipe to the pit and goes up around the pit and is run into what we call a mud ditch; at the end of the mud ditch is a shaker. The mud runs over a screen and the particles that come out of the ground go to the waste [251] pit, waste ditch, and the mud drops through the screen, goes back to the mud pit and is pumped back in the well again. That is a continuous procedure.

The Court: You have not told them how the mud comes back.

Q. (By Mr. Scampini): How does it come back, come out of the well?

A. Well, with pressure applied to the inside of the drill pipe, the mud is pumped in and it has to go some place, so it comes back up around the drill pipe.

The Court: On the outside of the drill pipe.

The Witness: A. On the outside of the drill pipe.

Mr. Scampini: The pressure is obtained from the pumping? A. Yes.

Q. The pump pumps the mud into the hollow drill pipe? A. Yes.

Q. Did you notice anything in connection with the sands that were deposited in the ditch?

A. Yes, we took samples continuously, all the time, of all that formation.

Q. What did you observe in respect to the samples taken by you between November 27 and 29?

(Testimony of William Herbert May.)

A. They were very good. They showed oil sands, definitely.

Q. Did you observe anything in connection with any gas reflections from the sand in the ditch?

A. Yes.

Q. Please tell what you observed, or what was done?

A. Your mud became very gassy. Sometimes you run your mud through a long ditch to give it a chance for the gas to [252] escape from the mud; you could take a can of this mud with a shovel, stir it, and a lot of little bubbles would come up and you throw a match there, and it would explode.

Q. Did you have any such incident in this case?

A. Yes. We did it for fun lots of times.

Q. Did you do it after the blow-out?

A. I can't remember whether we did it or not after the blow-out. We were busy trying to get the drill pipe out.

Mr. Scampini: You may take the witness.

Cross-Examination

By Mr. Bourquin:

Q. Mr. May, this log, I take it, was prepared under your supervision? A. Yes, sir.

Q. You were at the well every day; that would be right, would it? A. Yes.

Q. As a matter of fact, can you tell us in whose handwriting the log is over that period?

A. Well, each driller keeps his own shift.

(Testimony of William Herbert May.)

Q. That is, the top man of the crew is the driller?
A. Yes, sir.

Q. And he records the experience of his own shift on the log?
A. Yes.

Q. Under your supervision?
A. Yes.

Q. You saw that log every days, is that right?

A. Yes, sir.

Q. Every shift?
A. Yes, sir.

Q. If it is wrong I take it it would be your business to correct it?
A. That is right.

Q. If it is inadequate I take it that it would be your business to complete it?
A. Yes, sir.

Q. Did you take any tests for oil or gas after the well blew out on November 29th?

A. No, sir, it was impossible to do so.

Q. You did not take any?
A. No.

Q. How about this oil that you said came up top, did you take any tests of that, any samples?

A. I did not, no.

Q. You were the head man, weren't you?

A. That is right. It wasn't my business to test any oil. [253]

Q. Did anybody else take any samples to test?

A. That I don't know.

Q. You do not know?
A. No, sir.

Q. You saw, you said, gas come up?

A. Yes, sir.

Q. Did you make any test to give us any information as to whether that was an expected commercial deposit, or not?
A. No, sir.

Q. You made no tests whatever?

(Testimony of William Herbert May.)

A. I would have no way to make a test there, anyway. That would have to be taken to a laboratory to be tested.

Q. To test for flow?

A. To test for flow? I understood you to say for quality.

Q. No, we are not here trying a question of quality. We are trying a question of commercial or non-commercial volume and flow. Did you take any tests for flow? A. No, sir.

Q. None, whatever?

A. It would be impossible to do that in the condition there.

Q. You have been around oil wells a long time?

A. Yes, sir.

Q. Did you ever see tests made with a Petote tube? A. No, not that way.

Q. Do you know what a Petote tube is?

A. No, sir.

Q. Did you ever hear of it? A. No, sir.

Q. What way do you know of testing for volume of gas?

A. I do not know of any way of testing for volume of gas, myself.

Q. You do not know of any way?

A. No, sir, but I do know oil. [254]

Q. You do oil? A. Yes.

Q. As a matter of fact, you knew, didn't you, that this well had been having some showings of gas throughout the experience of that year before you came on, had it? A. Yes, sir.

(Testimony of William Herbert May.)

Q. And it had the same experiences in 1943 when it was explored; you knew that, didn't you?

A. Yes, sir.

Q. You knew it had been tested in 1943, didn't you?

A. Yes, sir.

Q. You did not feel called upon in 1944 to inaugurate any test at any time?

A. No, sir. We put a cement plug on the well that was there and drilled a new well, the one I am interested in. It didn't have anything to do with the old well, at all.

Q. Let us go back to this day when the well blew out on you. You have testified that you had encountered gas there earlier than November 29th, didn't you?

A. Oh, yes.

Q. On more than one occasion?

A. Yes.

Q. You said that your pressure was heavy pressure, is that correct?

A. That is right.

Q. You were impressed by it, were you?

A. Yes, sir.

Q. Did you inaugurate any tests?

A. No, sir.

Q. Did you suggest any——

A. No, sir.

Q. To your principals?

A. No, sir.

Q. None, whatever?

A. None.

Q. Didn't you feel that it was significant, what you encountered?

A. No, sir.

Q. You did not feel that it was significant?

A. Not a test. [255] Maybe I have you wrong

(Testimony of William Herbert May.)

here. Wait a minute. What do you mean by "significant"?

Q. Did you on any of the occasions that you encountered this gas you testified to think enough of it to stop and see if you had a discovery?

A. The ultimate reason——

Q. Please answer "Yes" or "No" and then if you have an explanation I am not going to deny the witness, but I think it is our right, your Honor. He may answer that "Yes" or "No."

The Witness: Will you ask the question again?

(Question read.)

A. No, I didn't test it. I didn't suggest a test.

Mr. Bourquin: I move that the answer be stricken out because the witness is not responsive. He does not answer the question. He says he did not test it, but that is not the question.

The Court: Read the question again?

(Question re-read by the reporter.)

A. Do you want me to answer that question "Yes" or "No"?

Q. (By Mr. Bourquin): If you please.

A. It can't be answered "Yes" or "No." I don't think.

Mr. Bourquin: We submit that, your Honor.

Mr. Scampini: The witness may explain, your Honor, if he can't answer "Yes" or "No."

The Court: I think maybe the witness does not understand the question. [256]

(Testimony of William Herbert May.)

Q. What the attorney is trying to find out from you, as I gather it, is what you, yourself, thought about it, whether you thought you had enough there to indicate to you as an experienced driller that the time had come to see whether or not you really had captured gas in commercial quantities, and he wants to know what you, personally, thought about it.

Is that right, Mr. Bourquin?

Mr. Bourquin: Yes, your Honor.

Q. (By the Court): I think you could answer that question "Yes" or "No" and then explain your answer, of course.

A. Why, yes. I will say "Yes" to that question. If I thought it was commercially——

Q. (By Mr. Bourquin): The question is, did you think——

The Court: Perhaps I should not have asked the question. I probably have it more confused, but I was trying to clarify it.

Mr. Bourquin: We can go around the other way, I think, your Honor.

Q. Mr. May, if you thought you had uncovered a deposit, you were not going to spend your principal's money just ignoring it and going down and drilling more hole, would you? A. You——

Q. You can answer "Yes" or "No" and we will know how you operate.

A. No, I wouldn't spend his money for something I did not think was right.

(Testimony of William Herbert May.)

Q. If you thought that any of the pressures or gas bubbles or [257] showings you had encountered meant discovery, you would stop the drilling expense right then, wouldn't you?

A. Not with the formation we were drilling in.

Q. What formation were you drilling in?

A. We were drilling in shale most of the time here, you see, and when we came to this and I would stop drilling and we were going to take a test.

Q. Oh, you did stop drilling and you were going to take a test?

A. That is correct. The last time we started pulling the pipe was when we intended to take a core of this formation we were in, but unfortunately we never got out of the hole to take that core.

Q. At what depth was it that you say you found you got out of shale and into sand again?

A. I can give the approximate depth. I can't give the exact depth without the log.

Q. Do you want the log?

A. It was around 4970, 4960, somewhere around there.

Q. 4960. Take a look and check it, will you please?

Q. (By the Court): If you had gas showings in the shale you could not bring in a well, could you?

A. Sir?

Q. If you had the gas showings while you were

(Testimony of William Herbert May.)

drilling in shale, you would not have a well, would you? You have to actually get in the sand?

A. I don't know. I have heard of some wells producing gas, that is, they would have gotten to the sand, but in the oil fields we all figure some place is a body of oil that makes this gas. That is what we are hunting for. [258]

Q. You usually get into the sand?

A. Yes. 4965.

Q. (By Mr. Bourquin): 4965. When did you get there? A. Sir?

Q. When was it you got there?

A. At this depth?

Q. Yes, please.

A. That was the 25th of November, 1944.

Q. The 25th of November was the first time you got to 4965? A. Yes, sir.

Q. You testified on your direct examination that at 4950 the going was hard and slow.

A. Yes.

Q. And you went to——

Mr. Scampini: The reporter did not receive that answer because the witness had nodded his head and made no reply to the question, and I desire the witness' reply so the reporter will receive his answer.

Mr. Bourquin: I had not finished, but if he says something, I have no objection to it going into the record.

(Testimony of William Herbert May.)

Q. You testified also that at 4965 you began to make the hole in the *said*, is that correct?

A. Yes.

Q. You testified after that that you saw higher pressures and the well started surging?

A. Yes, sir.

Q. And that on November 8th the pipe stuck in the heaving shales and you spotted oil?

A. On November 8th we spotted oil, yes, sir.

Q. That well had been in sands before, hadn't it?

A. The well had been what?

Q. In sand before.

A. Yes, we went through stratas of sand. [259]

Q. I think you testified it was your practice throughout your operation to take frequent samples of sand from the ditch and test them, is that correct?

A. We took samples every five feet of hole we made, we took a sample.

Q. And you had taken the samples frequently before you got——

A. Yes.

Q. During the course of the operation from September 27th to November 29th?

A. Yes, sir.

Q. The samples of sand?

A. Not necessarily—I didn't say sand. We took samples every five feet.

Q. Did you examine the electric log of the well when you went on it to see what the experience had been before?

A. Yes, sir.

(Testimony of William Herbert May.)

Q. Did you see that the well had passed through successive stratas of sand in 1943?

A. Yes, sir, water sand.

Q. What?

A. That was water sand the electric log showed.

Q. The electric log showed it was sand?

A. Some places that I saw.

Q. What did the electric log indicate? What did you see on it that indicated water sand?

A. What do you mean—what did I see? Do you mean how does the needle work on the chart?

Q. No, you said you saw the electric log had showed they had come through water sand before.

A. That was up above where we set the whipstock, yes.

Q. What do you mean by water sand?

A. There is water sand and oil sand. Water comes out of water sand, and oil comes out [260] of oil sand.

Q. You knew that the experience in 1943 was that they did not get, you mean, sufficient oil or gas, is that correct, so you term it water sand, is that your answer?

A. No, we wouldn't have drilled another hole if we did not think we had some chance of getting a well.

Q. This hole that you were drilling had water in it all the time, didn't it?

A. Had what?

Q. Water in it. You were getting water in this

(Testimony of William Herbert May.)

hole that you were drilling right up to the blow-out, weren't you? A. Getting water?

Q. Water.

A. Do you mean we produced water out of the hole? All formations have water in them.

Q. Weren't you getting water in the hole that you were drilling from the time that you went on in September 27th right down to when it blew out on November 29th?

A. I don't know about the time until it blew out, but I know we encountered some strips of water sand in there, yes.

Q. Didn't you have a high salt content in that mud throughout? A. Not always, no.

Q. Did you see the mud reports that were made periodically?

A. Yes, sir, and the number of grains of sand.

Q. Did you ever see any of them in that experience that did not report a salt content?

A. It reported a salt content, yes.

Q. What you term a high salt content in the mud? A. I wouldn't say; I don't know. [261]

Q. Have you any idea? A. No.

Q. Have you any idea in the range of figures at all? A. No.

Q. So if you saw the mud reports you would not know whether the salt content reported was high or low, is that correct?

A. As a rule——

Q. Did you?

(Testimony of William Herbert May.)

A. We have an engineer that takes care of that.

Q. Would you know if you saw the mud reports whether the salt reported was high or low?

A. Yes.

Q. You would? A. Yes.

Q. What would that indicate to you?

A. That is the number of grains of salt per cubic centimeter of your fluid.

Q. The number of grains of salt?

A. Yes, sir.

Q. Per cubic centimeter of the fluid?

A. Yes.

Q. How many would you say would be a high content?

A. I can't say how many would be high.

Q. You can't say?

A. Or how many would be low.

Q. Have you any idea? A. No, sir.

Q. Would you say from a report reporting so many whether it was high or low? A. No.

Q. You have the log there before you. Will you look at it and tell us whether it shows the amount of oil that you poured down that drill pipe on November 27th?

A. No, it does not. All it says is, "Spotted oil."

Q. It does not show how much?

A. No, sir.

Q. No record of that?

A. Not on this, not on here, no. [262]

(Testimony of William Herbert May.)

Q. Were you there when it was spotted?

A. Yes, sir.

Q. What shift was it spotted on?

A. Spotted on the afternoon shift.

Q. What hours is that shift?

A. From four to twelve.

Q. Where did that oil come from that was spotted?

A. It came out of our fuel oil tank.

Q. Out of the fuel oil tank that you were using to fire the boiler, was it? A. Yes, sir.

Q. Have you any record anywhere of how much oil you put down there that day?

A. The only record I have is what I know I put in there.

Q. Have you any record?

A. No record, only I know the amount we put in.

Q. What did you put it down for?

A. 8 barrels.

Q. What did you put it down for? What was the purpose of it?

A. To loosen the drill pipe.

Q. To loosen the drill pipe? A. Yes, sir.

Q. What did you put it down for on November 8th? A. To loosen the drill pipe.

Q. How much did you put down on November 8th? A. 25 barrels.

Q. How long did you leave the oil there on November 8th?

A. Approximately 8 hours.

(Testimony of William Herbert May.)

Q. What does the log show?

A. Sometimes you leave it longer. The log shows 8 hours. It shows the oil was spotted November 8th on the afternoon shift, and the pipe was pulled loose on the morning tour of the 9th.

Q. Let me look at that.

(Mr. Bourquin examined the log.)

The first entry of circulating after spotting the oil on November 8th is on the first shift of November 10th, isn't it?

A. What did you say?

Q. The first entry of circulating after spotting the oil on November 8th is the entry of November 10th on the morning shift, circulating, isn't it?

A. Yes, that is what it shows here.

Q. That is the first time the log shows circulation was resumed after spotting the oil on November 8th. Now, will you look at the log for the spotting of the oil on November 27th, please?

A. Yes, sir.

Q. And you said that the oil was spotted on the last shift, the night shift?

A. Yes, sir.

Q. Will you follow your log and tell me when after that you find on the log that circulation was resumed?

A. It does not say circulation, but it says here——

Q. Wait a minute. Don't argue, please. We will ask that that be stricken out, your Honor. I want

(Testimony of William Herbert May.)
to know when after that does that log show circulation resumed—circulation?

A. It says circulating on daylight shift November 30th.

Q. November 30th, the day after the well blew out that was, wasn't it?

A. On the morning shift it shows, "Pumping in mud." So if you pump in the mud you have to circulate, but [264] the word "circulating" doesn't show, that you asked me, until that shift.

Q. It shows on the morning shift of November 30th, "Pumping in mud"? A. Yes.

Q. And then the day shift, as distinguished from the graveyard shift, shows circulating?

A. Yes.

Q. Look at the log for November 28th, the day after you spotted that oil. A. Yes, sir.

Q. Does the graveyard shift on November 28th record circulating?

A. No, sir. Do you mean the word "circulating"?

Q. What?

A. You mean the word "circulating"? It doesn't show it, no.

Q. Tell us what it does show. Read the entry for November 28th, graveyard shift.

A. "Moving oil in hole, working pipe."

Q. Moving oil in hole, working pipe. What does that "working pipe" mean?

A. Trying to get it loose, up and down.

Q. It means picking it up at the top and jerking on it? A. That is right.

(Testimony of William Herbert May.)

Q. That is the graveyard shift. What does the day shift on November 28th record?

A. In the log, here?

Q. Yes.

A. It shows, "Moving oil, working stuck pipe."

Q. What does the night shift, November 28th, show?

A. "Loading truck, cleaning out cellar, lights out, working pipe."

Q. What does the graveyard shift on November 29th show? [265]

A. "Clean out the cellar, mix mud, work pipe."

Q. "Mix mud" clearly denotes mixing the mud in the pit, doesn't it? A. Yes, sir.

Q. It was the day shift then of the 29th that the well blew out, didn't it? A. Yes, sir.

Q. Mr. May, during the time that the oil was spotted and left there, circulation was stopped, wasn't it, while it was left there?

A. Yes, we closed the well in when we spotted oil.

Q. Do you know what tendencies take effect in the mud when the circulation is stopped?

A. Yes, it is liable to be cut with gas and lighten the weight of the mud.

Q. It is liable to be cut by gas, and so it will be clear to the jury and the rest of us—I am having a time with this—when you say "cut with gas," you mean that gas enters the mud and rises up through it?

(Testimony of William Herbert May.)

A. Yes, it breaks down the—what should I say—well, gas out with mud is not good mud, unless you can get the gas out of it, and as long as it is moving continuously your mud stays in fair condition, but if it sits still the gas will weaken the mud to such an extent that it is not good mud.

Q. Then the purpose of your weight is not being served when that is taking place, is it?

A. I didn't understand.

Q. While that is taking place the purpose of the weight of your mud is not being served?

A. No.

Q. The weight of the mud is not then holding the gas down. [266] but the gas is rising through the fluid; that is correct, isn't it? A. Yes.

Q. When that gas rises and builds up in that column to the point and to the place where it exceeds the pressure of the remaining column above it—say it was 100 feet—what happens?

A. The well would blow out.

Q. The well would blow out, and out will go is what is above the gas, and the gas will come after it, won't it? A. That is right.

Q. And that will take place in succession as many times as that gas builds up in that fluid, won't it? A. Yes, sir.

Q. You were here this morning when the gentleman with the sense of humor, from Churchill, the real dresser, testified, weren't you?

A. Yes, sir.

(Testimony of William Herbert May.)

Q. You heard him testify that when he looked up from his fireman's place he saw the mud and sand blown up out of the hole?

A. Saw it choke up, then blow up again.

Q. Choke up and then blow up again, didn't you?

A. Yes, sir.

Q. Did you see that?

A. Yes. At the same time we were trying to close the well in. We didn't have too much time to look around to see what was going on. All we wanted to do was stop it.

Q. By the way, you were describing to us what you were using to close the well in. You applied some name to it. What was that name?

A. Reagen. That is the name of the [267] company that puts it out. They call it a Reagen head.

Q. Isn't that a blow-out preventer?

A. Yes, sir.

Q. Sure. Why don't you call it a blow-out preventer when you talk about it?

A. We use control head. Control head and blow-out preventer is the same thing.

Q. Isn't it commonly referred to in the trade as a blow-out preventer?

A. Or control head.

Q. That is the purpose of it, isn't it?

A. Yes, sir.

Q. The purpose of it is when your mud begins to surge, getting out of control, your gas is building up, to bleed it out and prevent a blow-out?

A. Yes, sir.

(Testimony of William Herbert May)

Q. That was not done here, was it?

A. Yes, sir, it was.

Q. When was it done?

A. We didn't know the well was going to blow out when we opened it.

Q. No use was made of the blow-out preventer until the well had blown out?

A. No. You can't pump, circulate with the blow-out preventer closed.

Q. It was the conclusion reached at the well that the casing had been fouled or collapsed at the window, wasn't it? A. Yes, sir.

Q. What kind of a whipstock did you put in that casing? A. A Baas Bros whipstock.

Q. How did you cut it? Did you cut off square cuts and bevel the edges, or not?

A. You mean of the casing?

Q. Yes, the casing.

A. The casing is cut out with what [268] they call—

Q. What did you do on that occasion?

A. We cut it, milled it off, twenty feet of the whole string of casing at this depth of 4158. I think it was.

Q. If my pencil were the casing—

A. Yes, sir.

Q. Did you cut it off square at the bottom?

A. We will say you cut it off square at the bottom, yes.

Testimony of William Herbert May.]

Q. When you got to the top of the 40 feet that you were going to use for the window——

A. 20 feet.

Q. The top of the 20 feet that you were going to use for the window, did you cut it off square at the top?

A. Cut it off square at the top first.

Q. Did you leave it that way?

A. No, we milled out the 20 feet. It was all cut up in fine shavings and floated out, that 20 feet of casing.

Q. You milled that out? A. Yes, sir.

Q. What I am getting at, did you leave the bottom of the upper casing cut off square?

A. Yes, sir.

Q. Did you bevel it?

A. No, the whipstock is beveled to take care of that, that you put in there.

Q. Wasn't that upper portion of the casing feather-edged—in other words, cut on a slant down on a feather edge?

A. No, when you cut off a casing with cutting tools it goes straight through it.

Q. Let me see the log on that a moment, will you please? [269]

A. Whether or not it was a cutting edge or a feather edge, the whipstock takes care of it that you put in there, because the whipstock extends above the place it was cut and extends below the place it was cut, and below you set some sleeves in there, and when you let the weight of your whipstock

(Testimony of William Herbert May.)

down, it sets those sleeves so it won't go down any further than it is, and also there is a hanger on the edge of it that hangs over the edge of the casing that is sticking up from the bottom.

May I correct the name of the whipstock?

Q. If you wish.

A. Barrett Overshot is the name. Baas Ross set the whipstock, but Barrett Overshot is the name of the whipstock.

Q. Let me ask you this, without taking the time to explore this voluminous record: Did you leave a feather edge on the upper casing at the bottom of it? In other words, did you cut on a slant through the material so that when you got to the bottom you had less than the thickness of the casing?

A. Oh, no.

Q. You did not do that? A. No.

Q. You testified that you closed the well in on November 23rd. Do you want the log?

A. I didn't testify we closed it on November 23rd.

Q. You did not?

A. I do not think so.

Q. You testified on one occasion you closed it in and then the pressure built up to some hundreds of pounds.

A. Yes, it would build up. [270]

Q. What?

A. It would build up to 1600 pounds when we closed the well in.

Q. When was that?

(Testimony of William Herbert May.)

A. I can't remember off-hand. Several times we closed the well in, but I know that the day we were repairing the mud line, I know—I remember distinctly the pressure went to 1600 pounds in about an hour and a half.

Q. And in about an hour and a half the pressure built up on the gauge from 0 to 1600 pounds, is that it?
A. Yes, sir.

Mr. Bourquin: That is all.

Mr. Scampini: Shall we conclude, or does your Honor wish to take the recess?

The Court: I think we might perhaps take the recess at this time. We will take the afternoon recess, ladies and gentlemen. Please bear in mind the admonition of the court.

(Recess.) [271]

Redirect Examination

By Mr. Scampini:

Q. Mr. May, can you state from your own recollection whether or not between the period of time intervening approximately eight hours after you spotted oil on November 27, 1944, to the morning of November 29, when the well blew out, you had resumed circulation in the well?
A. Oh, yes.

Q. Is there anything in the log book on November 28 that indicates to you that circulation was in progress on that day? Take a look at the page on November 28, please.

A. Some of these drillers get a little careless

(Testimony of William Herbert May.)

in writing everything on the log. It should be written on there.

Mr. Bourquin: I ask that be stricken.

The Court: Yes. The question is, where is there anything in the log.

The Witness: A. Yes. The mud was built up to 113 pounds on the daylight shift November 28. You could not build your mud up to that weight without having circulation.

Q. (By Mr. Scampini): With respect to the matter of tests. In November of 1944, at or about the time when the blow-out occurred, or immediately prior thereto, such as schlumberger or Johnson formation tests, could any such tests have been made while the pipe was stuck? A. No.

Q. Were you able to make a test or make those tests after the blow-out? A. No. [272]

Q. Why not?

A. Because the pipe was stuck.

Q. Isn't it common practice to cut the casing square when you set a whipstock? A. Yes.

Q. And a bevelled or feather edge whipstock is supposed to take care of a casing that has not been bevelled or feather-edged? A. Yes.

Q. Was the whipstock in this case set in the usual and normal manner? A. Yes.

Q. In the ordinary course of drilling wells, is it not true you often encounter water sands?

A. Yes.

Q. What would you do to shut off the water sand?

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Transcript of Record

In Three Volumes

VOLUME II

Pages 433 to 912

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(Testimony of William Herbert May.)

A. If you went to shut it off at a certain place you run another string of casing in and cement the casing.

Q. Isn't it a common and ordinary thing to also run into salt water sands? A. Yes.

Q. Isn't it a fact salt water sand are looked for in the course of drilling oil wells?

A. Yes. Salt water is an indication of an oil field. You don't see it any place else.

Q. If you don't run into salt water sands in the course of drilling oil or gas well you feel somewhat discouraged? A. Yes.

Q. Did you run into a salt water sand at or about the time that this well blowed out, just prior to the last shift?

A. That I don't remember. We had salt water in the well to a certain extent. [273]

Q. Do you know whether Mr. Ed. Mohr made a salinity test? A. Yes.

Q. You don't know what the result of that test was? A. No.

Q. Do you know that tests were made by Mr. Mohr?

A. Mr. Mohr made several tests while in the process of looking at the well. I can't name the date now.

Q. Isn't it also true that in the course of drilling a well that you would find a very hard formation or shale overlying an oil or gas sand?

A. Yes.

Q. Isn't it true that hard formation or shale is

(Testimony of William Herbert May.)

generally known in the oil field practice as the cat?

A. Yes.

Q. You were drilling in a hard formation just prior to the last three or four feet of drilling?

A. That is correct.

Q. Is that your best recollection?

A. Yes.

Q. Along towards November—I forget the date—you had entered a soft formation?

A. Yes, on November 25.

Q. At what step did you enter that soft formation?

A. It says here between 4,951 and 4,975.

Q. You were in the course of coming out of a soft formation, were you not?

A. With the drill pipe?

Q. Yes. A. Yes.

Q. With the intention to make a core?

A. Yes.

Q. Prior to entering the soft formation, had you been drilling—through what formation had you been drilling? [274]

A. Shale.

Q. Was it hard shale or soft?

A. Hard shale. We had to use a rock bit.

Q. When you drill in soft formation you change the type of bit?

A. Yes, yes.

Q. At that time you had entered a soft formation?

A. Yes.

Q. You knew that by the increased rotations of the rotary table, is that it?

(Testimony of William Herbert May.)

A. That is one of the indications, and the formation may be dug with a lot less weight on the bit.

Q. Did you notice any of the sand that came out of the softer formation?

A. Well, we took samples of it.

Q. What kind of a sample was it?

A. Oil sand.

Q. Would you please step up to this blackboard, if you wish, Mr. May, and draw a picture for the Jury of a whipstock, what it looks like when it is set?

A. Say there is a string of casing at this depth (indicating). You want to set a whipstock. You go in and cut the pipe off, like that, at, we will say, 4,400 feet, and you mill out twenty feet, you would just destroy about twenty feet of pipe. That is all washed out in little fine shavings, the same as you would take a pencil and cut a piece out of it. You cut a piece out. Then you take your whipstock—say you want to go out this way, your whipstock is bevelled at a three degree angle. The whipstock is set in this hole. This particular whipstock [275] when you set it was at a slant, like that. You go down here with the bit the next time after it is set, and it hits the edge of the whipstock and gradually digs out—it comes down to the bottom of the twenty feet and you have put the casing in a new territory, and this whipstock had some slips, that is what we call slips, they are conical wedges, you have a little wedge in the pipe so it won't go down the hole, those slips extend down here three or four

(Testimony of William Herbert May.)

feet; also over the slip that is still extending up here there are some hangers on the whipstock because of an extra safeguard. The whipstock extends up here about two feet above where the pipe is cut off, so you have no chance of hitting the edge of the casing with your drill stem or bit or anything like that.

Q. When you come to the outside of that old casing you start making a new hole parallel on along the same one, just outside of the old one?

A. Yes.

Q. What happened to the old hole?

A. It is abandoned. This old hole was plugged off, cement plugging.

Q. Cement plugging. That is all.

Recross Examination

By Mr. Bourquin:

Q. Mr. May, you drew our attention to certain diagrams. How do drillers in their parlance distinguish between a section and a window?

A. That is just a term that we use. A window, we say we cut a window in the pipe. That is a term that is used in the oil field. [276]

Q. Do drillers distinguish between a section and a window? A. It is all the same.

Q. All the same. In other words, you mean to say that if they say they cut a window it means as if they said they have milled a section?

A. Yes. That is, in this state that is exactly right.

(Testimony of William Herbert May.)

Q. Is that the usual practice? A. Yes.

Q. That has been your experience?

A. Yes.

Q. You said something in answer to Counsel that you had been examining sands, that is, you were down there, from the time you got through this shale and into the sand again, you said there was an oil sand. What did you mean? What do you mean by "oil sand"?

A. Oil sand is sand that oil comes out of.

Q. That oil comes out of. Will examine your log? Do you find on your log any such record that oil sands had been found in the exploration at the date you are talking about?

A. No, I don't think we kept any record at all of that. The samples were put in little bags and given to Mr. Faria and I think they were sent to, I don't know where he sent them to get them tested.

Q. The log is silent on the subject is it?

A. Sir?

Q. The log is silent on the subject. The log is silent on that subject.

Mr. Scampini: I submit the log will speak for itself. [277]

Mr. Bourquin: I am asking the witness.

Mr. Scampini: Well, he has not had a chance to look through 175 pages of the log, your Honor.

Mr. Bourquin: Well, if that objection is serious and your Honor rules, I will give the witness the opportunity to examine the log.

(Testimony of William Herbert May.)

The Court: No. I think the witness had already answered the question. I think he said it was not put in the log. You said that, didn't you?

The Witness: I don't know whether it was put in the log. I don't remember a lot of those things. The main thing I was interested in was drilling the well. The engineering department generally takes care of those things.

Q. (By Mr. Bourquin): Will you draw my attention, please, in the log to the place where you answered Counsel that the log showed building up mud after the spotting of the oil on the 27th?

A. "Mud weight 113 pounds. Viscosity 45."

Q. What date are you looking at, and what year?

A. That was right—the daylight shift on the 27th.

Q. The daylight shift on the 27th?

A. No, wait a minute. That is the wrong page.

Q. What is that indication? Do you mean to say that that is an indication it was circulating?

A. Yes.

Q. After the oil was spotted, the graveyard shift on the 27th, when then do you find any record that indicates mud being [278] built up?

A. After the oil was spotted?

Q. Yes.

A. The oil was spotted on the afternoon shift on the 27th.

Q. That is really the night shift?

A. Yes.

(Testimony of William Herbert May.)

Q. Four to twelve night shift, midnight.

A. Yes. So we would not build up any mud during that time.

Q. When was it after that, as you answered Counsel, that you saw the record indicating to you mud built up to circulation, where was that?

A. On the 28th, the daylight shift.

Q. The daylight shift? What was the reading?

A. "Mud weight 113. Viscosity 64".

Q. Do you mean to say it was the way you kept the log that when the mud weight and viscosity was entered, that the mud was in circulation and being moved?

A. Yes.

Q. Then it follows that on shifts where there is no mud weight or viscosity entered, that the mud was not in circulation, does it?

A. I wouldn't say that, because sometimes they didn't put it down. You probably can see lots of pages where they won't put that on there.

Q. Let's look at that. You called our attention to—that was November 27, Tour 3, the graveyard shift?

A. The graveyard shift. Tower is the afternoon shift.

Q. That's right. Night shift or afternoon shift. The entry of operations reads "spotted oil unload baroil". Is that correct?

A. Yes. [279]

Q. Where?

A. That was brought up on a truck and we were unloading it.

Q. On the property?

A. Yes.

(Testimony of William Herbert May.)

Q. On that date there was no mud weight or viscosity recorded? A. No.

Q. The day later—

A. I don't know. Sometimes we put it down. The entry the day before is 113 and the day before that 114.

Q. Now, turn to the first shift on November 28. That also has no record of mud weight or viscosity?

A. That's right.

Q. But the middle shift that day has the entry, "Mud weight 113. Viscosity 64". Then again the night shift of the 28th, the afternoon shift, has no entry of mud weight and viscosity, has it?

A. No.

Q. Will you turn again to the morning shift on November 29, the graveyard shift? That shift has no entry of mud weight and viscosity?

A. Correct.

Q. Do I understand your interpretation that because you see mud weight and viscosity on the log on the day shift of the 28th it was after the oil was spotted, that that is proof that the mud was circulating? A. Yes.

Q. But you say that when you do not see that it does not mean anything; when you do not see a mud weight and viscosity entry it does not mean anything with respect to circulation, is that your contention?

A. No. They simply neglected [280] to put it

(Testimony of William Herbert May.)

down. That is all the answer I can give for it. It does not indicate anything as far as I can see.

Q. How do you weigh that mud?

A. You have a device, scales, to weight it.

Q. On top of the property, the surface?

A. Yes.

Q. By dipping it?

A. Yes, just dip up a certain amount of your mud, put it in your scales and weight it.

Q. You dip up some of the mud into a container?

A. No, the scales, they have in the oil fields to weigh mud——

Q. You pick up your mud and put it on the scales? A. In a container, yes.

Q. Well, it is not in the mud stream?

A. You take the mud out of the mud stream.

Q. You don't weigh it in the mud stream?

A. No.

Q. You take it out? A. Yes.

Q. You could weight it coming in or coming out?

A. Yes.

Q. You could weight it in the pit before it goes down the drill pipe or you could weigh it in the pit after it comes out of the drill pipe, you dip it from the pit?

A. Either that or the mud stream out of the ditch.

Mr. Bourquin: I think that is all.

Mr. Scampini: No further questions. [281]

WILLIAM G. BRADFORD

called as a witness on behalf of defendants; and having been first duly sworn, testified as follows:

The Clerk: Q. Will you state your name to the Court and Jury?

A. William G. Bradford.

Direct Examination

By Mr. Scampini:

Q. Where do you reside?

A. Whittier, at the present time.

Q. What is your usual business or occupation?

A. Oil business.

Q. How long have you been in the oil business?

A. I believe since about 1914.

Q. What have you done in that business?

A. Well, driven mules, laid pipe lines, dug sump holes, cleaned out wells, pulled wells, repaired them, drilled them and produced them. [282]

Q. In what fields have you worked?

A. Well, I have worked, I will say, in practically all the major fields of California, which are Bakersfield, Colinga, Ventura, Santa Barbara, Santa Maria, Huntington Beach, Whittier, Montebello, Coyote, Richfield, Texas, Oklahoma, Old Mexico, Venezuela—quite a few places.

Q. You say you have been working since you were fourteen years of age. How old are you now?

A. 50 years old.

Q. Are you still active in the drilling business?

A. Well, not for the last year, not too much. I had a little heart attack about a year ago and I have had to cut it down quite a bit.

(Testimony of William G. Bradford.)

Q. In the course of your activities have you acted as driller? A. I have.

Q. Have you brought wells into production?

A. I have.

Q. How many wells would you say you have brought into production?

A. Well, I would hate to estimate. I would say probably 50 or 75.

Q. Do you engage in the purchase and sale of oil properties?

A. I have in the last seven or eight years, for the reason I lost an eye in the building department, and I tried to get away from that.

Q. Do you own oil properties? A. I do.

Q. Do you own royalties? A. I do.

Q. Have you bought and sold royalties?

A. I have.

Q. Have you bought and sold oil leases?

A. Yes, sir. [283]

Q. Have you bought oil leases for major producers? A. I have.

Q. Have you sold any leases or royalties to the major producers? A. Yes, sir.

Q. In what fields have you engaged in transactions of that character?

A. Oh, various fields throughout the State of California, here, and in New Mexico.

Q. How many leases would you say you have bought and sold in the last seven years in California?

A. Well, I would estimate that I have handled, oh, in the neighborhood of 200,000 acres.

(Testimony of William G. Bradford.)

Q. Do you often or do you ever go out and lease entire blocks for major companies?

A. I do.

Q. What is the usual procedure followed in those instances?

A. Well, we just go out and lease it up.

Q. What do you lease?

A. We take the mineral rights, take a lease on the mineral rights for the oil and gas.

Q. Do you take a block of leases on structures?

A. Well, we take what we think to be on a structure from the best information we can obtain, and our own knowledge, myself. We will go in and block up an area that we desire to lease and we call that our building block.

Q. What factors do you take into consideration when you determine to go out and lease up a block of land?

A. All the geological information that I can get hold of: Water well logs in the surrounding country that we are working in, logs of old wells that have been drilled nearby—all of that is summed up, brought down, and then we try to figure if we are on trends with other fields, and on-trend means an awful lot to us in this state, because the majority of the oil and gas fields in this state run northwest and southeast. Very few of them run due east-west or due north-south.

Q. Do you generally determine the outline of a structure before you start leasing?

A. We try our best to.

(Testimony of William G. Bradford.)

Q. Then what land do you take under lease after you have made that determination?

A. All that we can possibly get within the scope we think to be good.

Q. If land appears to be off of the structure do you go after it?

A. No, I wouldn't be interested.

Q. If land appears to be faulted do you go after that?

A. Sometimes. That depends on what particular field you are working in.

Q. Explain, please.

A. Well, you might have a series of block faults. You might hold some property lying against a fault, and it has been drilled on the other side and proved there was no oil or gas over there. Maybe that is a block fault and the oil may be on the north side or the south side, and you want to get on the opposite side and pick that land up.

Q. You know, of course, Mr. Joseph Faria?

A. I do.

Q. Did you do some work for the Cal Bay Corporation?

A. I did.

The Court: Counsel, before you proceed with this examination I would like to inquire whether this witness is going to [285] be a witness who will give his opinion as to his values.

Mr. Scampini: Both as to what he has done and also as to value.

The Court: I want counsel to know that the court will have in mind limiting the number of

(Testimony of William G. Bradford.)

experts who will give opinion testimony as to value, because otherwise the case could extend out too far, and if one side wanted to produce three or four experts, it would result in the other side doing the same thing, and I think that a reasonable limitation on each side should be two experts to give their valuations, unless counsel have some other reasons for stating otherwise.

Mr. Bourquin: I think that is enough, your Honor.

The Court: I say that because maybe you would have two experts that you really would want to present, we will say, as to valuation, and then you would produce a witness whom you might call to use for two purposes, and be shut out. I think it is always well for counsel to know that. The law provides that the court has discretion in that matter. In practically every condemnation case that I have presided over we have limited the number of experts as to opinion of value to two in number, because I think counsel will readily see that there is no limit to the number of persons whose opinions you could present, and all that would mean would be a long string of people coming in, and one side would want to meet the other side with a similar number, and we would be here for an indefinite period of time. With that in mind, I was wondering whether you want to use this witness for valuation. I am not saying whether you should or you should not.

Mr. Scampini: I was going to say, your Honor, I had two geologists and petroleum engineers to use

(Testimony of William G. Bradford.)

as experts, and I also intended to use Mr. Bradford, because he is what is known as a practical oil man, as distinguished from a geologist and petroleum engineer who figure out their computations theoretically. This is a man who deals in those things. I had intended to use the two experts mentioned and Mr. Bradford as one who works in the field of valuation from a practical and operative point of view, and I do not think that is an unreasonable request, if I may so respectfully submit, your Honor.

The Court: How many experts did you expect to use as to value?

Mr. Bourquin: Two, your Honor, but unfortunately in these cases, as your Honor knows, the way the evidence is handled, if one side feels that they are entitled to meet as many as the other fellow uses on the same subject, it does so. I think two would be plenty, myself, but I would like a ruling on that rather than make a concession about it.

The Court: Of course, this witness is going to testify to some factual matters concerning his connection with this particular well.

Mr. Scampini: Yes, your Honor, and he is in a position, I [287] respectfully submit to your Honor, to make determinations.

The Court: It may be that he might be a witness that you would want to use. I am just thinking in terms of numbers of witness, that is all. The testimony of expert witnesses as to value usually does not take very long, because you just have the witness

(Testimony of William G. Bradford.)

testify as to his experience and then ask him what his valuation is, and what he bases it on, and that is that; but it is the number of them that we are interested in. If you have three, then the other side, of course, if they want to have three——

Mr. Scampini: I have no objection to the other side having three or four, for that matter. It is wholly up to the court.

The Court: I have an objection to that. It takes too long, and one good witness is better than a dozen bad ones. Have you other witnesses here? I mean are they available?

Mr. Scampini: Mr. Norris is here today and Mr. John H. Wentz will be here. Mr. Wentz, the appraiser, will be here Tuesday. Mr. Lowe is here today.

The Court: You mentioned three names.

Mr. Scampini: Mr. Wentz and Mr. Lowe worked together. One did the field work.

The Court: There will be only one witness?

Mr. Scampini: There will be only one witness for the purpose of appraisal.

The Court: This witness, Mr. Wentz—— [288]

Mr. Scampini: And Mr. Norris, the geologist.

The Court: Will be the two experts as to valuation?

Mr. Scampini: That is right, your Honor.

The Court: Does counsel object? You do not have to use three if you do not want to.

Mr. Bourquin: No, we do not object, your Honor. We just hope it will be confined, because these witnesses usually take a long time.

(Testimony of William G. Bradford.)

Mr. Scampini: If it please the court, at the opening of the trial your Honor asked us how long you thought the trial would take, and I replied to your Honor that I thought it would take between two and three weeks. I had in mind the number of witnesses we had. Half of our witnesses have not been heard yet. I cannot hurry it any more than I have been doing it, your Honor. I am trying to expedite the matter as fast as I possibly can do so without indulging too much on the court or the jury.

The Court: Without going into too much detail, you say you have a large number of other witnesses. On what subject are they going to testify?

Mr. Scampini: Mr. Norris will have to testify on all the work he has done in the geology of this structure which led to Mr. Faria drilling this well. That will take a whole day.

The Court: He is going to testify as to valuation?

Mr. Scampini: Yes. [289]

The Court: You spoke of other witnesses.

Mr. Scampini: I have Mr. Johnson, of the Johnson Formation Tests, who will be here Tuesday, and who will testify as to the result of the formation test.

The Court: He will be a short witness?

Mr. Scampini: We have Mr. Ed Mohor, as to the building up of the mud and the reasons for it. That will be another hour's examination. Then we have Mr. Bender, of the Bender Drilling Company, as to the reasonable cost of drilling the well. And

(Testimony of William G. Bradford.)

I just can't waive that type of testimony. Your Honor has ruled that Mr. Faria's testimony is not qualified. I will have to bring in an expert on it.

Mr. Bourquin: Have you any other witnesses besides those that you have mentioned, Counsel?

Mr. Scampini: Then we have the valuation men, Mr. Norris, who will take only a few minutes on that subject, because his testimony will have already gone in, and we have Mr. Wentz, who will fix values. It might take to Wednesday or Thursday.

The Court: I think in view of the circumstances it would not be unfair to limit the number of witnesses who will testify as to value to two on each side, and that will be the order of the court.

Mr. Scampini: I desire the record to note an exception to your Honor's ruling. It will seriously handicap the presentation [290] of our case.

The Court: If it develops that we have not finished the case, if it should appear at any time that there is any real prejudice involved after the witness has testified, you may renew your application to produce another expert.

Q. (By Mr. Scampini): Mr. Bradford, will you please state in what capacity you went to work for the Cal Bay Corporation?

A. Well, I went there to take charge of this well to see what I could do toward cleaning it out and maybe drilling it on down to the gas zone, which I was told they tapped.

Q. When did you arrive there?

A. I believe it was about the first of November or December, somewhere along there.

(Testimony of William G. Bradford.)

Q. December? A. December.

Q. What did you do immediately upon your arrival?

A. Well, I looked the situation over to see what was to be done.

Q. What did you observe and what did you do?

A. Well, I seen they had had a blow-out there of some kind. It looked like it might have been a good-sized one to me from the evidence of mud and spray and stuff that was scattered around. Their pipe was in the hole stuck, and I was told by a Mr. May——

Mr. Bourquin: Just a minute. What he was told we move, your Honor, that it be ruled out as hearsay. We object to it.

The Court: Yes.

Q. (By Mr. Scampini): Did you discuss the subject with the [291] head driller?

A. I discussed it with Mr. May and Mr. Faria.

Q. Did you try to obtain all the information available concerning the well? A. I did.

Q. What did you do in an effort to obtain that information?

Mr. Bourquin: We submit, your Honor, at this time what the witness did is irrelevant and immaterial. What he saw and what he found is something else. I will object to what he did in the obtaining of permission as irrelevant and immaterial.

The Court: The witness would be entitled to testify as to what he saw there as to conditions and

(Testimony of William G. Bradford.)

what he did, yes; conversations with persons connected with the company would obviously be hearsay.

Q. (By Mr. Scampini): Proceed.

A. I felt from talking with Mr. May and Mr. Faria that the pipe was stuck 200 feet off the bottom of the hole.

Mr. Bourquin: Your Honor, in order to be consistent we move that that be stricken as hearsay. He said he found from talking to others that such and such was the case.

The Court: I think that is hearsay. It is a justifiable objection.

Q. (By Mr. Scampini): Did you check the log of the well? A. I did.

Q. What did you do in that respect?

A. Well, I tried to get the pipe loose.

Q. What did you do in respect to checking the log? What did [292] you do?

A. I looked at it for well depths, to what had been going on previously, and what they had entered in the book.

Q. Then what did you do after you made your investigations?

A. Well, I lightened up the mud. I found the weight of the mud they had there—I could see they had small circulation, and the mud, I thought, was awful heavy, and by lightening the mud a bit would increase the circulation and might help them to free the pipe and the bit that was stuck.

(Testimony of William G. Bradford.)

Q. What was the weight of the mud when you first tested it? A. 115 pounds.

Q. To what weight did you reduce the mud?

A. To 100 pounds.

Q. What happened when you reduced it to 100 pounds?

A. She increased her flow, and I seen the well was going to start to blow again and I immediately closed the well in and we mixed up heavy mud.

Q. What did you do to close it in?

A. I told the boys to close the gate.

Q. What gate?

A. The Reagan control head.

Q. And then you say you built the mud up again? A. That is right.

Q. To what weight? A. 115 or better.

Q. Did you find that the weight of 115 pounds was necessary to keep the well under control?

A. I did.

Q. When you found that what did you do?

A. Well, we brought it up to that, and I started working on the pipe to loosen it.

Q. Describe what you did.

A. Well, I took the tongs that [293] were on the derrick, that we screw the drill pipe together with, and put them on the Kelly. The Kelly is sticking out through your rotor table. The Kelly is square. The rotor table turns, and by rotating the table, putting the tongs on there, I put all the torque around there I could possibly put on those tongs and tied the tongs on the corner of the derrick

(Testimony of William G. Bradford.)

and then by picking up on it, that would have a tendency to rotate the pipe, maybe all the way to the bottom of the well, which they hadn't tried, and when I did that, that moved the pipe probably a half turn or a quarter turn, and immediately killed what circulation I did have. Then I called in the Haliburton people.

Q. What did the Haliburton people do?

A. They have high pressure pumps.

Q. What pressure did they build the pressure up to? A. I would say around 4000 pounds.

Q. Were they able to regain circulation?

A. No.

Q. When you were not able to regain circulation what did you do next?

A. I began to left-hand the pipe out, take it out by left-hand thread.

Q. Describe that process.

A. We take a light strain on the pipe and turn it to the left and unscrew as much as we can unscrew, hoping to get it all if we could, but it so happens you never do, and then you get a string of left-hand pipe—that means that has thread cut opposite your right-hand [294] thread—and by taking up on the right-hand thread that is in the hole, you rotate it off below, and it comes up a piece at a time, or whatever you can get.

Q. Did you follow that process? A. I did.

Q. How many pieces did you get out?

(Testimony of William G. Bradford.)

A. I removed the pipe down to 4150, somewhere within a few feet of that. That may be off a little bit.

Q. Does the log indicate that?

A. The drillers did the writing in the log. I didn't.

Q. When you arrived at 4150 or thereabouts what did you ascertain?

A. I found the condition of the hole—that the pipe was collapsed at that depth, the casing where the window had been cut in this casing.

Q. In which the whipstock had been set?

A. Where the whipstock had been set, the casing had collapsed agin our drill pipe.

Q. How did you know it was collapsed?

A. I determined that by running in a blank joint of a smaller diameter pipe than the casing, running it in on the bottom of my drill pipe and going down until I got to that spot and gave it weight. Had the hole been round and not collapsed, I would have come out of the hole with the joint round, but my joint, when I shoved it in, it mashed it flat, the bottom end of it, and when I pulled it out it proved to me the pipe had collapsed at that depth.

Q. Have you formed any opinion as a result of the work done by you in that well as to the cause of the collapse of that casing? [295]

A. Yes, by a gas blow-out.

Q. Please state how you arrived at that conclusion?

(Testimony of William G. Bradford.)

A. If I may use your blackboard, I can give you a little more information on it. I can't draw. What I do will not be too good.

(The following testimony was given at the blackboard.)

This represents your strain, known as your water strain. That at one time was landed, we will say, 5000 feet. I don't know what depth it was landed at. I will use that as the figure. This is the surface of the earth. The hole was drilled. This pipe here landed at 5000 feet, and should have been cemented, which it may have been. I don't know. Anyhow, something goes wrong in this hole in the first place, and they can't use it any more. So the question was to get out of this, save all the hole you can save, and drill a new one. And the way they did it, they removed what we call a section or a joint of this continuous water strain, and by removing that they use mills—these people contract part of that—I did it, myself—and they have patented whipstocks. The particular whipstock they used there I don't know for sure, but I believe the Baas Ross Company set it. They make that their business. This whipstock was set in. And where this window was cut—we call it a window in oil terminology—where that window was cut, in my opinion, was a bad shale body—this is the formation of the earth—there was a heavy shale body of brittle shale [296] that is very easy to slip, and especially if you let your mud weight get down the least bit, too thin or too

(Testimony of William G. Bradford.)

light—in other words, if your mud gets too thin, this shale will slide in all the time and keep coming down this hole here.

Now, at the time they stuck this pipe—this hole comes on down like this—this represents your bit, this represents approximately 200 feet this bit was off the bottom—this was supposed to have been the sands that I know—I don't know, but I understand they had been drilling in. When this well blew, the gas coming up through here would naturally follow into it, and this being open through here in a 20-foot section, in a bad section of shale, which is easy to disturb, with that heavy flow of gas coming through there it would naturally create a cavity in here by bringing that shale up, shoving it up the chimney, like a siphon, and taking it out of this hole, blowing it in the air, and after the cavity was created there, this thing would slide over, either that way or this way. That was blown out and would slide over here, pinching this casing down like this. It would be pulled right agin this piece of pipe, because this was all blown out here. It kept dropping in and blowing out, and dropping in and blowing out, as the gas came up, and that is what collapsed the pipe.

I was able to remove this pipe, here. Their drill stuck down about, I would say, about six or eight feet—here would be the top of the whipstock—about six or eight feet above [297] the whipstock there were joints. There were joints every so many feet of this pipe. One joint comes out eight or ten

(Testimony of William G. Bradford.)

feet from the top of this window here, and that was the pipe I was able to get at, and when I got to this place where this pipe had mashed in, it had gone in like that, and naturally it would mash the pipe down there with nothing in it. By giving it weight up here, shoving it in, it would collapse and make it flat.

Q. (By Mr. Bourquin): You mean the hole is flat?

A. I could see the pipe was collapsed, and I said, "That part of your well from that point down is no good. I can't clean it, Mr. Faria. I can't clean that, Joe. You are done as to that part of the hole."

Q. (By Mr. Scampini): When you discovered that the casing was collapsed at or about the place where the whipstock had been set, what, if anything, further did you do in respect to trying to clean the hole?

A. I didn't make any further effort to clean that hole at all. It wouldn't be worth it.

Q. Were you there on or about December 15, 1944, on the premises? A. I believe I was.

Q. Were you working at the well?

A. I think I was working there at that time.

Q. What had been your recommendation to Mr. Faria in respect to drilling further?

Mr. Bourquin: I object to that, your Honor, as irrelevant [298] and immaterial. I have no objection to his putting his views in the form of an opinion, but his recommendation is immaterial. It is hearsay.

(Testimony of William G. Bradford.)

The Court: That is true.

Q. (By Mr. Scampini): Have you made some recommendations to Mr. Faria in respect to further drilling?

Mr. Bourquin: I object to that as irrelevant and immaterial.

Mr. Scampini: I am not asking him to state the recommendation, your Honor. I just asked him if he did make some recommendations.

The Court: All right. Overruled.

The Witness: I did.

Q. (By Mr. Scampini): Had Mr. Faria made his decision as yet, if you know?

Mr. Bourquin: I object to that as calling for the opinion and conclusion of the witness as to what was in the other man's mind.

Mr. Scampini: That objection is probably good. I will withdraw the question, your Honor.

Q. On or about December 15, 1944, what, if anything happened in your presence at the well?

A. I don't know the exact date now. I can't say. That has been a long time ago, and I have been a sick man part of the time since then, and a lot of deals and other jobs I did. I can't say the exact date or hour. [299]

Q. Tell us what happened of an unusual character at or about that time?

Mr. Bourquin: Will counsel indicate what he is directing his inquiry to? The question asked as to what if anything unusual happened seems to us to call for anything.

(Testimony of William G. Bradford.)

The Witness: I wasn't there at the time——

Mr. Bourquin: May I interrupt the witness and ask for a ruling?

The Court: If it calls for a conversation with someone it would not be material. It is some physical fact you wish to develop?

Mr. Scampini: Yes.

Q. Were there any notices served upon you by a representative of the Navy at or about December 15, 1944?

A. Well, a Navy man came up there. It was either the Navy——

The Court: Isn't that all agreed to?

Mr. Bourquin: That is conceded, your Honor. The stipulations are in here. They were made in September.

Mr. Scampini: May it please the Court, I am going to reserve my decision as to whether I shall use Mr. Bradford as a valuation expert. I may want to recall him for that purpose.

The Court: I would suggest that you do that and see how we get along.

Mr. Scampini: You may take the witness.

The Court: Counsel says he is not going to examine this [300] witness as to valuation.

Mr. Scampini: At this time, your Honor. I may elect to recall him for that purpose.

Mr. Bourquin: With that likelihood does your Honor want me to proceed to examine the witness at this hour, with the possibility of his coming back?

The Court: I think so.

(Testimony of William G. Bradford.)

Cross-Examination

By Mr. Bourquin:

Q. Mr. Bradford, were you connected with any company but yourself at that time?

A. No, sir.

Q. In other words, you were a freelance or doing your own business?

A. On my own at all times.

Q. Is that the way you have always operated in your experience in the oil fields? A. No, sir.

Q. You have, of course, been employed by others?

A. Been on the payroll many, many years.

Q. Coming back to this matter that you have testified to on the blackboard—I do not know whether we need to pull it out or not unless you think it is necessary—you said that it was your opinion, from the fact that your weight was stopped at a point just above the window, that the casing was collapsed at the window, is that correct?

A. I didn't say anything about any weight at all.

Q. Your device that you lowered, what was that, again?

A. That was a point of pipe on the bottom of our string of [301] drill pipe.

Q. That is what I mean. A. Yes, sir.

Q. It was your opinion from the fact that your joint of pipe would not pass a point just above the window that the casing was collapsed at that place?

A. Yes, sir.

Q. You did find, did you, when you backed out

(Testimony of William G. Bradford.)

or pulled out the old drill pipe that you could not get out, which was below the window, through the window, and to some extent above the window?

A. That is right, a few feet above the window.

Q. In other words, you found that drill pipe stuck?

A. That is right.

Q. In the hole at that place?

A. That is right.

Q. And you found the hole to be blocked when you lowered your other pipe?

A. That is right.

Q. In other words, if that pipe stuck there, it was so stuck that that old drill pipe did not leave room for your pipe to go past it and on down, is that correct?

A. Well, the drill pipe filled up the majority of the hole, and my pipe went down over the stub that was sticking up in there probably three or four feet, until it came to where the other pipe had pinched in on it from collapsing.

Q. It went down on the stub?

A. The stub of the drill pipe left in the hole sticking out through the window.

Q. You concluded your pipe that you let down entered the top of the drill pipe remaining there——

A. It didn't enter it, no. It went over it. [302]

Q. It went over it?

A. That is right.

Q. It was something that was larger than the old drill pipe?

A. Oh, yes.

Q. What was the diameter of the pipe that you let down?

(Testimony of William G. Bradford.)

A. I don't know offhand the diameter, but it was big enough to go over the joint of the blown end on the piece of drill pipe that was sticking up.

Q. How big was that drill pipe?

A. Probably three inches in diameter.

Q. O.D.? A. O.D.

Q. Outside diameter?

A. I will say three inches.

Q. So your pipe was bigger than that?

A. My pipe was larger in I.D., so as to go over that stub of drill pipe sticking up.

Q. What was the inside diameter of your pipe?

A. I don't know, probably $3\frac{1}{2}$, $3\frac{3}{4}$, maybe 4 inches, something like that.

Q. How far above the window did you say this pipe remained, the old pipe?

A. I don't know, three or four feet, I forget the exact feet. It might have been up to 6 or 7 feet. I don't know for sure. But it was sticking past my window where the whipstock was at.

Q. In other words, sticking up some distance above the window, and below that window that whole pipe had turned on a tangent, hadn't it?

A. Below the window? I don't know what happened below the window.

Q. No, I mean it was set on a tangent, wasn't it?

A. Starting [303] from the top of the whipstock, your drill pipe in your new hole takes off on an angle. What angle it is I don't know.

Q. Apparently the old drill pipe came unscrewed at a joint some place above the window?

(Testimony of William G. Bradford.)

A. A few feet above the window, yes. We backed it off.

Q. The joint represented the end of one piece of how long pipe?

A. Oh, those were approximately 21 feet.

Q. 21 feet?

A. I am just making a guess. Maybe I am a foot off, a foot and a half, or maybe six inches off.

Q. In other words, you found the drill pipe to consist of lengths of 20 to 21 feet?

A. We make them up in stands. We call those singles. One joint is a single or a length.

Q. What was it here? You took the drill pipe out. What was the stand or length?

A. When they came out there happened to be a break—I was fortunate enough——

Q. Please. The old drill pipe you took out, how long were the stands or lengths of it?

A. Oh, they were approximately 20-foot lengths.

Q. Approximately 20-foot lengths?

A. Lengths, yes, joints, joints of drill pipe.

Q. Joints of drill pipe?

A. Sometimes I would get a whole stand and sometimes I would get one joint, sometimes I would get a double and a triple.

Q. How large would be one stand?

A. It would be four singles.

Q. Four singles? A. That is right. [304]

Q. Is a stand a rigid piece, or not?

A. Well, I don't know what you would call rigid.

(Testimony of William G. Bradford.)

Q. I mean is it pliable?

A. Oh, it can be bent a certain amount because we drill holes and wiggle off probably a thousand or two thousand feet.

Q. Did you expect, when you lowered her, to find the joint of the old drill pipe standing even, uniformly even and vertical in the hole?

A. I didn't expect how I would find it. I went in there with this open pipe to see how I would find it, and I found it standing where I could get over it.

Q. How do you know you got over it?

A. How do I know I got over it? The pipe was collapsed that I ran out in an egg shape, leaving a round circle there where the pipe had been inside of it. It was mashed down against the drill pipe, and I knew I was over it.

Q. In other words, you mashed your pipe down on it?

A. I let my pipe down in this manner here over this stub (indicating), and then it probably went down three or four more feet until I was to where the pinch was. When I got to the pinch, my pipe wouldn't go farther. By giving it weight, shoving it, I mashed it flat, leaving a circle where this pipe had been inside of it.

Q. How did you mash it?

A. By letting the weight of the drill pipe down on it. It was the lower part of the strain.

Q. You found it would go over the old pipe three or four feet before stopping?

A. Yes, sir.

(Testimony of William G. Bradford.)

Q. And further forcing just bashed your pipe?

A. That is right.

Q. That is what I want to bring out. It was your pipe that you say you found was mashed?

A. Yes.

Q. Not the old drill pipe. All right.

A. The old drill pipe in my opinion is not round in that spot.

Q. As a result of which you could say that you lowered over the old drill pipe three or four feet and then, despite heavy [305] pressure on your pipe, you could not get any further?

A. That is right.

Q. The hole was plugged?

A. That is right.

Q. And you surmised or concluded, you might say, that that was because the casing was blocked there?

A. That is correct, caused by the blow-out.

Q. And you further surmised from that that that was collapsed by the blowout?

A. That is right.

Q. Do you distinguished between a section and a window in this operation in whipstocking?

A. Well, I'll tell you. With a lot of our whipstocks we will go right through the pipe with a bit and not cut out a section of pipe at all, but we will call that a window whether it is six inches in diameter or whether it is a whole joint. Everything is a window. You might call it a section or a length. We would mill out a joint.

(Testimony of William G. Bradford.)

Q. In your practice do you distinguish between a section and a window in making a whipstock? Is there any difference in the practice? Do the terms denote the same thing or do they denote something else? A. I didn't get that question.

Q. What is a window——

A. A window——

Q. In a casing, when you make one to set a whipstock.

A. Is by removing a portion of the pipe or all the pipe at a given spot. [306]

Q. It's the same whether you just cut a window in the pipe or whether you cut the whole pipe out? Do you still call it a window?

A. I would still call it a window.

Q. What is a section?

A. If you take out a section it is still a window. It is just along window. That is all—an extra long one.

Q. A section would be taking out a complete section of the casing, wouldn't it?

A. Well, it might be a complete section or it might be a double section or you might——

Q. I mean, all the way around, in complete circumference?

A. All the way around the pipe you can have it. You can have four pieces and say that is a section, or five pieces. It depends on what you take out.

Q. A section in drilling parlance would mean a section?

(Testimony of William G. Bradford.)

A. It could be a 4-foot section or a 5-foot section.

Q. Yes, any length. A. That is right.

Q. Now, you say a window. Does a window mean a window in the sense that we cut a window or hole in the casing, or does it mean anything else?

A. When we make a hole through that pipe or remove part of the pipe, we have made a window.

Q. You have made a window?

A. That is right, or all the pipe.

Q. You mean when you cut a section it is a window?

A. If you take out a joint five feet in length, twenty-five, or two feet long, it is still a window.

Q. You call that a window?

A. I call it a window.

Q. And you make no distinction in making records of it, is that your testimony?

A. That is right.

Q. You found that there was circulation?

A. Sir?

Q. Did you find when you arrived there that they still maintained circulation after the blow-out?

A. Yes, sir, they did.

Q. That would mean—your diagram will help us—that after the blow-out the mud could still be and was passed down the pipe, down the whipstock to the body, out the body and was returning through the whipstock up the outside pipe?

A. It couldn't come through the whipstock. It had to come along by the whipstock. Nothing goes through the whipstock. A whipstock is solid.

(Testimony of William G. Bradford.)

Q. You are speaking of a whipstock as something that the drill pipe sets on?

A. No, nothing sets on the whipstock.

Q. Let us clarify this without getting technical. Circulation after the blow-out meant that after the blow-out the mud was still being pumped down the drill pipe, discharging or coming out the bottom of it and running from the bottom——

A. That is right.

Q. Returning on all sides of the drill pipe to the top of the hole?

A. We don't know if it returned on all sides. It may be channelled.

Q. Let us say it returned.

A. Returned circulation. [308]

Q. That is right? A. That is right.

Q. In other words, mud could do that?

A. Yes, it might.

Q. If mud could do it, would you think that gas could do it? A. Yes.

Q. Did you find any gas blowing from the top of the hole when you arrived there on December 1?

A. I didn't find any gas blowing from the top of the hole, no, sir.

The Court: Would this be a convenient time for you to suspend?

Mr. Bourquin: Yes, your Honor.

The Court: I think perhaps we might take the afternoon adjournment at this time. Ladies and

(Testimony of William G. Bradford.)

gentlemen, we do not ordinarily hold jury trials on Mondays, as some of you may know, although I think Mr. Biney was here in a case in which we used every day, but that was a pretty long case. We usually just have the jury sessions on Tuesday, Wednesday, Thursday and Friday, because the Court tries to get some other cases disposed of on Mondays. Therefore we will take an adjournment in this case until next Tuesday morning at ten o'clock, and I will ask you to return at that time and still keep in your mind your obligation not to converse among yourselves or permit anybody else to talk to you about this case, and likewise you are to refrain from forming or expressing any opinion about the case until it is finally submitted to you. We will adjourn until Monday morning until ten o'clock, but in [309] this case until Tuesday morning at ten o'clock.

(Thereupon an adjournment was taken until Tuesday morning, January 28, 1947, at 10 o'clock a.m.) [309-a]

Tuesday, January 28, 1947

10:00 o'Clock A.M.

The Clerk: United States of America vs. Certain Land in Contra Costa County.

Mr. Bourquin: Ready, your Honor.

Mr. Scampini: Ready.

WILLIAM G. BRADFORD

recalled on behalf of defendants; previously sworn.

The Clerk: State your name for the record?

A. William G. Bradford.

The Court: This witness was under cross-examination at the last session?

Mr. Scampini: Yes, your Honor.

Cross-Examination

(Resumed)

Q. (By Mr. Bourquin): Mr. Bradford, you said you arrived at the well December 1?

A. I believe that is the day. I am not positive, but I think that was the day.

Q. You stayed about how long there at the well?

A. I stayed there until probably late that night.

Q. I mean, you were there other days later than that?

A. Yes. I stayed there, I would say, ten or twelve days, something like that. I don't know. Maybe fifteen days.

Q. Before you left?

A. That's right.

(Testimony of William G. Bradford.)

Q. That was your first and last connection with the project, [310] was it?

A. Yes; when I left there I left there.

Q. Can you refer me in the log—if I may have that—to the procedure you said you followed when you testified the other day that in an attempt to free that pipe you lightened the mud, but you found that the column began to flow again, so you put it back up to the normal weight?

A. That's right.

Q. Will you refer me to the data on that in the log, please?

A. I did not enter anything myself in this log, and if it is in there, somebody else put it in there. I did not. It may be in there. I will do my best to find it for you.

Q. Well, during the time that you followed that procedure, were the towers, the crews in attendance as they had been? A. Yes.

Q. Was the superintendent, May, there, as he had been? A. That's right.

Q. They had the keeping of the log?

A. They kept the record. The driller is really the man who keeps the record and the superintendent, he comes around, or should come around and look at it every day, or two or three times a day.

Q. Will you look to see if there is any evidence in the log of that particular procedure that you detailed to us, lightening the mud, finding the column then began to flow and increasing it again?

(Testimony of William G. Bradford.)

A. Yes. On the second it says, "Working stuck pipe circulating," and the mud on the second on one shift was 115 pounds, and then increased up to 116 pounds. [311]

Q. To 116 pounds? A. Yes.

Q. That is on the second of December?

A. The twelfth and second.

Q. The twelfth and second?

A. That's right.

Q. Are the two entries on the twelfth and the second in that respect the same? Oh, you mean it is entered 12, 2nd; in other words, December 2?

A. Correct.

Q. Pardon me.

A. Undoubtedly I came in there on the 12th and first.

Q. December 1?

A. Yes, either I was there in the afternoon, or on the morning of the first, if it was the morning of the second, and we increased the mud up to 116 pounds, I notice on the second.

Q. From what? A. From 115 and 116.

Q. What I was referring to was your testimony, I have the transcript here, that you gave Friday when you said:

"I could see they had small circulation, and the mud, I thought, was awful heavy, and by lightening the mud a bit would increase the circulation and might help them to free the pipe and the bit that was stuck.

(Testimony of William G. Bradford.)

“Q. What was the weight of the mud when you first tested it? A. 115 pounds.

“Q. To what weight did you reduce the mud? A. To 100 pounds. [312]

“Q. What happened when you reduced it to 100 pounds?

“A. She increased her flow, and I seen the well was going to start to blow again and I immediately closed the well in and we mixed up heavy mud.”

Have you examined the log for all the days that you were at the well to see if there is any evidence of that procedure that I have just read to you entered on the log?

A. That is there—the only thing on this log, the weight of mud shows the twelfth and second, December 2, on one tower it was 115, and the next up to 116, and the next tower didn't put down the weight of the mud. And the next one didn't put down the weight of the mud either, or the next shift didn't put it down.

Q. There isn't anything on the log there, I take it from what you have said, to show that the mud was ever lightened to 100 during the time that you were at the well?

A. No, I don't see anything, because I didn't keep any record of all this whatsoever; I had no reason to.

Mr. Bourquin: That is all.

The Court: Anything else?

(Testimony of William G. Bradford.)

Mr. Scampini: Yes, your Honor. I did not know counsel was finished. [313]

Redirect Examination

By Mr. Scampini:

Q. Mr. Bradford, on cross-examination last Friday you were asked a question by Government counsel—I have not had occasion yet to read the transcript, so I do not know where it is—but substantially it was to the effect, “Did you notice any gas on top of the well when you first inspected the well?” And your answer was, “No, I noticed no gas.” Will you please state, Mr. Bradford, whether it would be possible to see any gas at the top of the well? Was there any gas in the well?

A. Well, at that time the top of the well was completely shut off by having the Kelley in the hole, the drill pipe in the hole, and your control head, the gas head was coming out the side, where the discharge mud and everything comes out, coming out in the mud trough, the mud ditch, blowing out that way.

Q. You would have to go to the mud ditch end to ascertain whether or not the well was making gas?

A. That is right.

Q. I show you here the exhibit which is in evidence as Defendants’ Exhibit No. 15, and I will ask you whether or not that is the mud pit where you would have to go to ascertain whether the well was making gas.

(Testimony of William G. Bradford.)

A. No, sir, you wouldn't have to go to that mud—that is the mud pit, but you wouldn't have to go to that mud pit, because the gas comes from the side of your well into the flow pipe, and down the mud ditch, it goes down the mud ditch, and dumps in the suction pit where the [314] pumps pick it up and return it to the well.

Q. Did you observe any gas coming out of the side? A. I did, plenty of it.

Mr. Scampini: I show you this illustration, Counsel.

Mr. Bourquin: I take it, Mr. Scampini, you want to produce only the illustration? I won't take the time to read the matter on there if you are not offering that.

Mr. Scampini: Just the illustration of a rotary table.

Q. I show you here, Mr. Bradford, what appears to be a picture of a rotary table in the course of drilling a well, and I will ask you to look at it and state whether or not you can state what that picture represents, for the benefit of the jury and the court and us lawyers.

A. Well, I would say that that represents the drill pipe standing in the hole—in the Kelly, rather, showing a pair of tongs on the pipe. It is what I would call a rotary set-up, yes.

Q. That pipe which is sticking in the hole and pointing upward, where did it go?

A. That should be the Kelly there. My eyes are not good enough to see if it is the Kelly, or not—

(Testimony of William G. Bradford.)

I'll say that—but that should be the Kelly. That goes up to what we call the swivel, which hangs up here, that your blocks come down and tie onto, and your swivel never rotates, but allows your Kelly to turn around in the swivel, and then from there goes your mud hose down to your pumps.

Q. I will now show you Defendants' Exhibit No. 14, and I will [315] ask you to state where on that exhibit would appear to be the Kelly and the hose that goes to the mud pit.

A. From what I can see here I would say either in the hole, either drilling or circulating. The pipe that you see standing in the dirt happens to be some tubing which they probably used in making a test before.

Q. Where would you see the gas coming out of the well from the point of view of the perspective of the picture now in your hand?

A. If your pipe were out of the hole, or if your Kelly was set off and your pipe was opened, you could stand down here anywhere and see it. Otherwise, you would have to walk up this hill to the mud ditch and set where she is flowing out.

Q. Is that what you had to do when you appeared at the scene of the well?

A. Yes, I came in on the dirt floor and looked out on the ditch the first thing.

The Court: This document you are passing to the jury has not been marked in any way.

Mr. Scampini: Pardon me. May I offer this as our exhibit next in order?

(Testimony of William G. Bradford.)

The Court: That is for illustration.

Mr. Scampini: For illustration purposes only.

(The photograph in question was thereupon marked Defendants' Exhibit 21 for Identification.)

Q. (By Mr. Scampini): When you lost circulation, which I understand your testimony to be was when you made a turn of the pipe, [316] would gas thereafter be noticeable coming from the well?

A. No, you see once you kill that circulation that I did have by moving that pipe that closes off everything down below where your gas would be coming from, but couldn't get by that check. Otherwise, if it could get by I could circulate.

Q. The only way in which gas could ever come out of that well again would be by regaining circulation?

A. That is right, because inside our drill pipe we had a check valve, which was to keep the well from blowing back through your drill pipe, and even your drill pipe couldn't have been plugged, only this check valve. It couldn't be blown through your drill pipe.

Q. Did you try to regain circulation?

A. I did.

Q. Were you able to regain circulation?

A. I did not. I called in the Haliburton man. They have high pressure pumps for that purpose. And I put approximately 3500 to 4000 pounds of

(Testimony of William G. Bradford.)

high pressure on the well, and I didn't get any circulation whatsoever.

Mr. Bourquin: I think this was covered the other day in direct examination, your Honor.

Mr. Scampini: Yes, your Honor. I am coming to another point now.

Q. If circulation is not possible, Mr. Bradford, could any tests such as the Schlumberger or the Johnson formation test be made?

A. No, absolutely not. [317]

Q. What would have to be done in the instant case in order to have been able to make a test of the formation from which this gas is coming by means of a Johnson formation test?

A. It would have to set a whipstock, cut a new window, drill down to this sand seven or eight hundred feet, then make your test.

Q. What would have to be done in order to make a Schlumberger test of the formation?

A. The same thing.

Q. Could any test have been made of the formation found at the 4975-foot level, with the condition of the hole as you found it?

A. Absolutely not. You couldn't get down.

Q. What did you recommend be done for the purpose of making a test of that formation, Mr. Bradford?

A. Set another whipstock on top of where this well was pinched off and closed off, build another

(Testimony of William G. Bradford.)

whipstock, cut a window or cut out a small section or a window, and drill down to the zone and properly bring in a gas well.

Q. Were any preparations made for the setting of that whipstock?

A. Well, I had made some arrangements with the people down near Los Angeles that build those whipstocks. They built quite a few for me. I called them up and they said due to the shortage of steel it may take several days to get it up here. It is hard to get the type of steel we want.

Q. Did you have any conversation with representatives of the Navy looking towards obtaining an opportunity to test that [318] formation?

Mr. Bourquin: I object to that as calling for hearsay, irrelevant, and immaterial.

Mr. Scampini: If your Honor please, is it hearsay if it is a representative of the Navy?

The Court: I do not see how the conversation is material. The evidence shows already, does it not, that the Navy gave 30 days notice?

Q. (By Mr. Scampini): Between the date when you made your recommendation for the setting of the whipstock and re-drilling the well and the date when you were first served with notice, on December 15th, to vacate the premises, did you have any opportunity to wet that whipstock and re-drill that well or make any test?

A. No. I wouldn't have had a show, I wouldn't have had a chance. There wasn't enough time. It takes time to do that.

(Testimony of William G. Bradford.)

Q. When you were served with a notice to vacate the premises did you do anything relative to abandoning the well?

Mr. Bourquin: We object to this, your Honor, as irrelevant and immaterial. It has no bearing that I can see on the question of the market value here. Notice is conceded, admitted. It is in evidence.

The Court: There is no dispute about the fact that after you received the notice you abandoned the well.

Mr. Scampini: I have just one more question.

Q. I show you here a photograph, Mr. Bradford. I will ask you to look at it and state whether or not you can identify that photograph (handing a photograph to the witness).

A. Yes, that looks like——

Q. What is that photograph?

A. Well, that is the place where the oil dirt or gas dirt or drilling well material had been set. It looks to me like it may have been Faria No. 1.

Q. After what incident?

A. After the well had been cleaned off, the dirt torn down and the machinery removed.

Mr. Scampini: I offer this as our exhibit next in order.

(The photograph was thereupon received in evidence and marked Defendants' Exhibit 22.)

[Defendants' Exhibit No. 22 appears on page 1250.]

(Testimony of William G. Bradford.)

Mr. Scampini: Associate counsel reminds me that Exhibit 21 is only in for the purpose of identification.

The Court: No, for illustration.

Mr. Scampini: For illustration.

The Court: That is what you said.

Mr. Scampini: Yes.

The Clerk: Do you wish it marked in evidence for the purpose of illustration?

The Court: It is an exhibit. Counsel offered it for the purpose of illustration.

Mr. Scampini: Yes, but it is an exhibit in evidence, not for identification.

The Court: Yes. [320]

(Defendants' Exhibit No. 21 for Identification was thereupon received in evidence.)

[Defendants' Exhibit No. 21 appears on pages 1248 and 1249.]

Mr. Scampini: That is all. You may take the witness.

Recross-Examination

Q. (By Mr. Bourquin): Mr. Bradford, you said you observed gas at the flow pipe.

A. That is right.

Q. Would that be the pipe that would flow the mud out into the ditch? A. That is right.

Q. In other words, the column of mud around the drill pipe would outlet into the ditch?

A. That is right, it comes out under the dirt.

(Testimony of William G. Bradford.)

Q. What was the shape or the form of the gas that you observed there? In what state was it that you saw?

A. Well, it was blowing out across. Instead of stopping in the ditches, it was flowing right over the ditch.

Q. Was it gaseous, bubbling, or what?

A. It was gas.

Q. Describe it to us.

A. You saw a blue-looking haze coming out, a puff of mud, puff of gas; you could smell it, and I have been looking at it for 34 years now.

Q. That is the way you saw it?

A. That is right.

Q. As you looked at the mud arising in that hole around the drill pipe you would see a puff of mud and then a puff of gas, and then a puff of mud and then a puff of gas?

A. No, I didn't look around the drill pipe and nobody else can. It was out the side of the dirt where she's coming out. [321]

Q. So there will be no mistake, we are talking about where the mud comes out of the hole into the ditch.

A. That is right.

Q. At that place you observed a puff of gas, a puff of mud and a puff of gas?

A. That is right, and they were quite long puffs.

Q. In other words, the gas was still coming up in the mud, was it?

(Testimony of William G. Bradford.)

A. It was coming up in the mud. It came up in slugs by itself. That is, we call it slugs, or heads of gas.

Q. That mud was pretty gas-cut in that state, wasn't it?

A. Well, sir, that mud would get gas-cut mighty quick with the kind of gas we had on the well.

Mr. Bourquin: That is all.

W. H. McBRIDE

called as a witness on behalf of the defendants; sworn.

The Clerk: Q. State your name to the court and jury.

A. W. H. McBride.

Direct Examination

Q. (By Mr. Scampini): Mr. McBride, what is your usual business or occupation?

A. Well, at the present time I am working on a ranch.

Q. What were you doing on or about November of 1944? A. Working on an oil well.

Q. Had you been working on oil wells before?

A. Yes, sir.

Q. How long had you been working on oil wells?

A. Two different [322] occasions, seven or eight years.

(Testimony of W. H. McBride.)

Q. What were the usual duties that you performed on oil wells? What had you done?

A. I was a roughneck.

Q. What were you on or about November, 1944?

A. Roughneck.

Q. And for whom were you working?

A. Cal Bay Corporation.

Q. Were you working on the drilling of the Faria well at that time? A. Yes, sir.

Q. What is a roughneck in the business?

A. Well, you work on top of a rotary table, going in and out of the hole. You are spinning the pipe or unspinning it and coming out.

Q. Referring you to the exhibit which is in here for the purpose of illustration, Defendants' Exhibit 21, will you please state whether or not the roughneck generally handles the tongs which are attached to the drill pipe there? A. Yes, sir.

Q. Is that what you were doing on or about November 27, 1947? A. Yes, sir.

Q. Were you working on the well on the morning of November 29, 1944? A. Yes, sir.

Q. Who was your head driller on that shift?

A. Mr. May.

Q. Who else was working with you on that shift?

A. I don't recall all the fellows working there other than nicknames. A few of them I didn't know their last name at all.

Q. On or about November 27, 1944, did you notice anything unusual or different from that which has occurred previously in connection with the drilling of the well? A. Yes, sir. [323]

(Testimony of W. H. McBride.)

Q. What did you notice?

A. Well, the well blew in.

Q. Was that on November 27th?

A. No, sir, that was on November 29th.

Q. Referring you back to November 27th, what, if anything, happened?

A. I don't quite recall on the 27th. I think we was either stuck in the hole or circulating. I don't remember exactly.

Q. Do you recall when the pipe was stuck coming out of the hole? A. Pardon?

Q. Do you recall the pipe getting stuck while coming out of the hole? A. Yes, sir.

Q. Do you recall what you were doing when the pipe was being taken out of the hole?

A. Well, we were circulating, trying to get out of the hole.

Q. Had you been on that shift?

A. I was on the day shift.

Q. Do you recall the drilling of the well at that time?

A. I don't quite understand you.

Q. Do you recall what nature of formation you had been drilling through just about that time?

A. Well, we had hit oil sand.

Q. When did you hit the sand?

A. I don't recall the date on it. I don't exactly remember.

Q. Was it at or about the time when the pipe got stuck?

A. Yes, sir, I believe it was.

(Testimony of W. H. McBride.)

Q. What were you coming out of the hole for, if you know?

A. Well, I don't remember that. [324]

Q. After the pipe got stuck do you recall whether or not the well was circulating?

A. Yes, sir, we were.

Q. Do you recall the spotting of any oil in the well?

A. Yes, sir.

Q. How many barrels of oil were spotted in the well?

A. I believe it was somewhere in the neighborhood of 8 barrels, I believe.

Q. What did you do after spotting the eight barrels of oil into the well?

A. We circulated it, pumped it out.

Q. How long did you circulate?

A. I believe it was probably a day and a half, two days.

Q. Coming down now to the morning of November 29th, what happened on that occasion?

A. The 29th is the day the well blew in.

Q. That is right. What did you see?

A. Well, I first heard the well bubbling and gushing like, and all of a sudden she just started coming out, blew right out around the drill pipe, blew, I would say, somewhere in the neighborhood of 85 or 90 feet in the air.

Q. What did you see being blown up into the air?

A. It was oil, gas and sand.

(Testimony of W. H. McBride.)

Q. What kind of noise did it make?

A. Well, it makes a kind of a hissing sound.

Q. Did you observe the color of the material coming out of the well and being blown up into the air?

A. Well, if you [325] have ever been around a well when it blew in you would know it was gas.

Q. What was done after the well began to blow?

A. Well, we started shutting it down, trying to get it under control.

Q. What did you do for that purpose?

A. Put the blow-out head on it and then put the pressure pump on it.

Q. Do you try to use the gas preventor, the blow-out preventor? A. Yes.

Mr. Bourquin: This is leading, your Honor. The witness just testified he put the blow-out head on. He can be asked what he did rather than this form of question. We object to it.

Q. (By Mr. Scampini): Please describe exactly what you did to bring the well under control.

A. Well, the blow-out collar that goes around your drill pipe, fits down around your drill pipe next to your casing, we put that on and then put the pressure pump on.

Q. How much pressure did you put on, if you know?

A. I believe it was fifteen or sixteen hundred pounds pressure, I believe. I am not sure.

Q. After the application of the pressure had the blow-out preventor completely shut in the well?

A. Pardon?

(Testimony of W. H. McBride.)

Q. Was the well completely shut in after applying that pressure?

A. I believe it was, yes, sir.

Q. To what weight was the mud built up?

A. Well, it had dropped—that is how it came to blow in. I don't recall [326] what the weight was then, but I think we built it up to around 115 or 116.

Q. How long did it take you to bring the well under control?

A. I think it blew in around eleven, and I think it must have been around two or two-thirty, maybe three o'clock; probably two hours and a half.

Q. Did you make any examination of the sand that came out of the hole during the blow-out?

A. Well, yes, sir, I went out to the end of the mud trough where the mud comes out, circulates and goes back into the mud pit, and I think I got a coffee jar full of this oil sand and gave it to Mr. Faria.

Q. What did it look like to you or how did it feel?

A. Well, naturally it would be greasy, kind of rainbow-like colors.

Q. What color?

A. Kind of bluish. You can see it in the sand. You can tell.

Mr. Scampini: You may take the witness.

Cross-Examination

Q. (By Mr. Bourquin): What is your name?

A. W. H. McBride.

(Testimony of W. H. McBride.)

Q. How long had you been working on the well at the time of this blow-out?

A. I was only there around—it was either—a little over two months, I think it was.

Q. Had you been working on that well for two months before the blow-out?

A. Somewhere in that neighborhood, yes, sir.

Q. Had you had earlier experience working in oil or gas exploration? [327]

A. Not in California, no, sir.

Q. Had you had it elsewhere?

A. Yes, sir.

Q. How much, and where?

A. Well, I was born and raised in Texas right in the oil fields, and I have worked around seven or eight years off and on. I didn't work steady all the time.

Q. What years did you work in oil and gas exploration fields in Texas?

A. Well, I don't exactly recall the years—'28 and '29, and then later on it was '32, '33, '34, somewhere along there.

Q. '32?

A. '32 or '33. I don't exactly recall the dates, the year.

Q. Did you work around oil and gas gangs at that time?

A. Well, off and on. I didn't work steady.

Q. Did you work around them after that and before you went over here to this wildcat?

(Testimony of W. H. McBride.)

A. Well, I was born and raised in the fields. I started driving a team in the oil fields when I was a kid 14 or 15 years old.

Mr. Scampini: If the Court please, I desire to take exception to counsel's continued reference to this well as a wildcat. We contend it was a commercial discovery and not a wildcat.

Mr. Bourquin: I am not trying to decide the case by calling the exploration names. I am only using the name that I found on the reports furnished me the other day by Mr. Scampini, himself; the Baroid reports describe it. As I say, I do not want to give [328] any offense. Let the facts speak for themselves. I think the jury understands that. Shall I proceed, your Honor?

The Court: Yes.

Q. (By Mr. Bourquin): Mr. McBride you were at the well the days before this blow-out, were you not?

A. Yes, sir.

Q. Some days a few days before the blow-out, the pipe had stuck, is that correct?

A. Yes, sir.

Q. There had been an attempt to withdraw the pipe and then it stuck again a certain distance off the bottom, is that correct?

A. I think so, yes.

Q. Following that there were efforts made by the crews there to try to free that pipe?

A. Yes, sir.

Q. Spent two or three days there, is that correct?

A. I don't recall how many days they spent at it, trying to free it.

(Testimony of W. H. McBride.)

Q. On the morning of November 29th you were at the well, were you? A. Yes, sir.

Q. The crew then became aware of a disturbance in the well, didn't they? A. Yes, sir.

Q. They went down and put on a blow-out preventor? A. Yes, sir.

Q. And then they got it on, the mud blew out, is that correct?

A. Well, mud was blowing out when we went down and put it on.

Q. Mud was blowing out when you went down and put it on? A. Yes, sir.

Q. And the mud continued to bust out of that well for some [329] period of time, did it?

A. Yes, sir.

Q. Kicked out of the well up in the air?

A. Yes, sir.

Q. Kicked up about 20 feet above the blocks, did it?

A. I would say somewhere in the neighborhood of twenty or twenty five feet. The blocks, I think, were about half way up, somewhere around 60 or 70 feet.

Q. It took some hour or two for them to control the mud and stop the blow-out, did it?

A. Yes, sir.

Q. Have you ever been around wells before where they blew out? A. Yes, sir.

Q. What did you do with this sand that you said you took?

(Testimony of W. H. McBride.)

A. I took a coffee jar full of it and gave it to Mr. Faria.

Q. What color was it?

A. Kind of a rainbow-like color, green bluish.

Q. You gave it to Mr. Faria? A. Yes, sir.

Q. Have you any feeling or prejudice against the Government, Mr. McBride? A. Not a bit.

Q. Have you ever had any trouble with the Government?

A. Oh, no serious trouble, no, sir.

Q. Well, in 1937 were you convicted of post office robbery and served a year in Leavenworth?

A. No, sir.

Q. No? A. No, sir.

Q. Is your name Wayne Howell McBride?

A. Wayne H. McBride.

Q. Have you ever been in Leavenworth?

A. Yes, sir.

Q. How many times? A. One time. [330]

Q. Were you convicted of Post Office robbery in 1937?

A. I don't think it was in 1937.

Q. When was it?

A. I don't recall the date.

Q. Did you go to Leavenworth for that?

A. Yes, sir.

Q. How long did you serve?

A. Eight or nine months.

Q. Did you go to Leavenworth again after that on a Federal conviction? A. No, sir.

(Testimony of W. H. McBride.)

Q. Were you tried for desertion from the Army in 1931? A. It wasn't desertion, no, sir.

Q. Were you tried for a violation of the articles of war while in the Army? A. Yes, sir.

Q. Were you dishonorably discharged?

A. Yes, sir.

Q. Did you go to Leavenworth?

A. I didn't go to Leavenworth, no, sir.

Q. Didn't you go to Leavenworth for desertion in March, on March 26, 1931?

A. I went to Ft. Leavenworth.

Q. Ft. Leavenworth?

A. Yes, sir, the disciplinary barracks.

Q. The disciplinary barracks?

A. Yes, sir.

Q. How long did you serve?

A. Oh, I don't recall, a year and something.

Q. Were you convicted of burglary in Brown County, Texas, in 1934? A. No, sir.

Q. Did you serve any time in the Texas State Penitentiary commencing in 1934?

A. Yes, sir.

Q. Did you ever serve any time in the Texas State Penitentiary? [331]

A. No, sir, I did not.

Q. You did not? A. No.

Q. Did you ever serve any time in the Washington State Penitentiary? A. I did, yes, sir.

Q. When? A. 1939.

Q. What charge? A. Grand larceny.

(Testimony of W. H. McBride.)

Q. How long did you serve?

A. Four years.

Q. Have you gone under other names besides McBride? A. On one occasion, I think.

Q. What other names?

A. I don't recall what the names were.

Q. Did you go under the name of Roy Lester Burton, in Texas, in 1930? A. No, sir.

Q. Did you ever go under that name?

A. Not that I recall, no, sir.

Q. Did you ever go under the name of Jack Wilson in Texas? A. No, sir.

Q. Did you ever go under the name of Cecil Parker?

A. I think that is the one where I was picked up in Omaha riding a train going through the wheat harvest.

Q. Were you picked up in Idaho in 1936 and gave the name of Cecil Parker at Naples, Idaho?

A. No, sir.

Q. You have been in Idaho? A. Yes, sir.

Q. Were you picked up in Idaho in May, 1937 in Canyon County, on a larceny charge, and gave the name of C. Parker? A. No, sir.

Q. No? When did you first go to work in any of the oil [332] fields?

A. When did I first go to work in any oil field? I was born and raised in the oil fields.

Q. Have you ever worked as other than a rough-neck?

(Testimony of W. H. McBride.)

A. I started out skinning a team, driving a team.

Q. Driving a team? A. Yes, sir.

Q. Did you ever work in the scientific end of the industry? A. No, sir.

Q. Never had any scientific training in it?

A. No, sir, other than just roughnecking.

Mr. Bourquin: That is all.

Mr. Scampini: That is all, Mr. McBride. Thank you. [332-a]

Mr. Scampini: At this time, if it please the Court, before calling my next witness, Mr. Faria has asked me to respectfully request the Court for permission to correct an answer which he gave to one of Mr. Bourquin's questions. Mr. Faria, please. Mr. Faria wishes to correct an answer he gave to one of Mr. Bourquin's questions. The question you asked Mr. Faria was with reference to whether or not he had ever taken delivery of the casing and Mr. Faria answered, "No". He desires to change his answer. Shall I call him?

JOSEPH FARIA, JR.

recalled as a witness on behalf of defendant;

Direct Examination

By Mr. Scampini:

Q. Mr. Faria, in answer to Mr. Borquin's question at the conclusion of your examination, the question being: "Did you ever take delivery of the

(Testimony of Joseph Faria, Jr.)

casing that you purchased for the purpose of completing this well?", and your answer, "No". Do you wish to change your answer? A. Yes.

Q. What is your answer?

A. Well, the answer is that I did take delivery, but I did not understand when I thought he meant that I took delivery of the casing to the property where we was drilling the well, but I had bought this casing and paid for it, and we were waiting, making preparations to go down with the whipstock and we had notice that we had to abandon [333] the well from the Government, so I just left the casing there at Rio Vista, but it was all paid for. It was left there about several months.

Q. I now show you here a bill of sale from the Standard Oil Company. I will ask you to look at it and state whether or not that is the bill of sale on that casing? A. Yes, that's right.

Mr. Scampini: I offer as our exhibit next in order the statement identified by the witness.

That is all.

(The bill of sale was thereupon received in question and marked Defendants' Exhibit 23.)

[Defendants' Exhibit No. 23 appears on page 1251.]

Cross-Examination

By Mr. Bourquin:

Q. What did you do with the casing?

(Testimony of Joseph Faria, Jr.)

A. The casing, the National Supply people in Bakersfield took it over.

Q. What did they do with it upon buying it?

A. They bought it.

Q. What did you pay for it?

A. I don't know, but the receipt here shows around thirty-six or thirty-seven hundred dollars.

Q. Did you buy it all from Standard?

A. I bought some from Standard and some from Peter Cook.

Q. Did they deliver it to Peter Cook?

A. Yes.

Q. Was it new or used casing?

A. The Peter Cook casing [334] was used casing. The Standard Oil had been used a little, very little.

Q. You paid about thirty-six hundred dollars for the Cook and Standard casing?

A. I think so. I can't say sure, but I could get those figures off my books.

Q. You think that that is about right?

A. Well, I would say, I am not so sure, but I could get it for you.

Mr. Scampini: Counsel has the figures in the audit I gave him yesterday.

Mr. Bourquin: I ran over them, there were some figures that I wanted to call attention to, but they have not been prepared where they could be readily usable.

Q. Was it usable casing? A. Yes.

Q. Did you have any trouble getting rid of it?

A. No.

(Testimony of Joseph Faria, Jr.)

Q. What did you get for it?

A. It was a little less money than what we paid for it.

Q. How much less?

A. I don't know. You have to get that from the bookkeeper.

Q. What is your recollection?

A. I don't just exactly know how much less, but it was less, but I don't know how much.

Q. Fifty dollars less?

A. I imagine all of that and maybe more.

Q. Maybe something more than fifty? Was it something less——

A. It might have been. [335]

Q. Have you no idea how much less it was?

A. You would have to get it from the bookkeeper. I don't remember exactly.

Q. Is that the same casing as the other day you were referring to as being available and on hand, and you took a loss in buying it because you understood the Navy was going to let you go ahead?

A. That was the casing.

Q. The same casing?

A. Yes, 5,000 feet.

Q. You spent thirty-six hundred dollars for it?

A. Yes.

Q. And you sold it? A. Yes.

Q. You don't know how much less you sold it for?

A. Not exactly, no.

Mr. Bourquin: That is all, your Honor.

(Testimony of Joseph Faria, Jr.)

Redirect Examination

By Mr. Scampini:

Q: Can you approximate what the loss was?
Counsel does not want to get the exact figure.

A. I would say, over five hundred dollars.

Mr. Scampini: That is all.

The Court: We will take the morning recess at this time. Ladies and gentlemen, please bear in mind the admonition I have given you.

(Recess.)

Mr. Scampini: I will call Mr. Johnston. [336]

T. M. JOHNSTON

called as a witness on behalf of defendants; and having been first duly sworn, testified as follows:

The Clerk: Will you state your name to the Court and jury? A. T. M. Johnston.

Direct Examination

By Mr. Scampini:

Q. Mr. Johnston, what is your usual business or occupation?

A. We test oil and gas wells for productivity.

Q. What is the name of the concern with which you are associated?

A. The M. O. Johnston Oil Field Service Corporation.

Q. What position do you hold in that concern?

A. General Manager.

(Testimony of T. M. Johnston.)

Q. What is the usual activity of the M. O. Johnston Oil Field Service Corporation?

A. Well, we test wells that are exploring for oil or gas before and after casing has been set to determine producing possibilities of a given well or zone.

Q. What do you call the test that your concern makes of these formations?

A. Well, before a string of casing is set in a well we call them formation tests. We test, actually test any given formation and extract from that formation any fluid or gas that the formation is capable of producing and after pipe is set there are two types of tests; one test, they test to prove to the State of California and themselves that they have the water shut off from the producing zone. Usually after that test is made they will further test it for the producing possibilities.

Q. Now, taking up the test which you ordinarily make before setting casing, will you please describe what you mean by setting casing?

The Court: Counsel, hasn't that——

Mr. Scampini: Been gone into?

The Court (continuing): ——been gone into?

Mr. Scampini: All right.

The Court: Why don't you go just right to the particular point?

Q. (By Mr. Scampini): Did you in connection with the operation of Faria Well No. 1 make any test of the formations of the well?

A. Yes, we did.

(Testimony of T. M. Johnston.)

Q. Do you recall when those tests were made?

A. No, I don't.

Q. Have you got notes with you that show you?

A. No, I haven't.

Q. Well, I will show you here some notes and I will ask you to look at them and state whether or not you recognize them? A. Yes, sir.

Q. What are those documents?

A. They are copies of our actual test tickets that were made on the job and also copies of your pressure recorder readings that are read in conjunction with the tester.

Q. When you say "copy," do you mean photostatic copy? A. Yes.

Q. I now show you a photostatic copy of a ticket No. 6015. I have already shown them to counsel. Is that right, Mr. Bourquin?

Mr. Bourquin: Is that an exhibit? That is not marked as yet?

Mr. Scampini: It is the one of 6015, that is the one of 10/27 and 10/20.

(Conference between counsel.)

I show you Ticket No. 6015, to which there is attached a pressure chart dated October 5, 1943. Will you please state what were the results of that test made on that day?

A. Well, according to the test taken here they left the packer and the tools remain open for 18 minutes and had a light steady blow for the duration of the test, but there is no—they didn't put on

(Testimony of T. M. Johnston.)

the ticket what, if any, fluid was taken into the drill pipe during the test. I assume that probably there was not any fluid taken in and it was strictly a gas blow.

Q. What do the words "light, steady blow," indicate to you?

A. Well, if you have a light, steady blow on a test and that blow is caused by an entry of fluid from any given formation, you should contain some of that fluid in the drill pipe when [339] it is pulled from the hole, but when you have a blow and don't have any fluid, that is caused from a gas, a dry gas that does not produce any fluid.

Q. At what depth was that test on October 5 made?

A. The bottom of the hole at that time was 4,318 feet, and the formation shoulder was 4,287, that was 31-foot interval that was tested, the interval between 4,318 and 4,287.

Mr. Scampini: I now offer in evidence as our exhibit next in order the ticket No. 6015, being the test of October 5, 1943.

The Clerk: September or October, Counsel?

Mr. Scampini: October.

The Clerk: This is marked ninth

Mr. Scampini: I will have to correct that.

Q. Mr. Johnston, will you please state whether or not the date on that ticket of 9/5 when you compare it to the pressure chart is the correct date, or whether an error was made in writing down the date of the month, the number of the month, rather?

(Testimony of T. M. Johnston.)

Mr. Bourquin: Can you correct that from the depth; is it off the depth?

Mr. Scampini: I have all these tickets beginning September 30, clear down, so it must have been October 5. The first test was made on September 30.

Mr. Bourquin: If you find it is off on the depth, we will [340] agree he may correct it.

Mr. Scampini: Well, the log will indicate it.

The Court: You think that should be October instead of September?

Mr. Scampini: Yes; I know it is, your Honor, because the log will so indicate.

The Witness: Well, the ticket on our test, it was made on the ninth month and the fifth day. These photostatic copies are made up in our shop and they are turned over to a man who has hundreds of these tickets to photostat, but he probably made a mistake on the ticket.

The Court: Let it be marked.

(The ticket in question was thereupon received in evidence and marked Defendants' Exhibit 24.)

[Defendants' Exhibit 24 appears on pages 1252 and 1253.]

Q. (By Mr. Bourquin): Will you take a look at the pressure chart attached to the ticket and state what that pressure chart means to you?

Mr. Bourquin: Is this the same ticket?

Mr. Scampini: Yes.

(Testimony of T. M. Johnston.)

The Witness: Well, actually, you can't tell a whole lot about the pressure recorder, because something went wrong in the mechanics of the clock that propels the instrument and about all that you can tell about it at all is just the weight of the hydrostatic column of fluid in the hole. That really does not mean anything. [341]

Mr. Scampini: I offer in evidence as our exhibit next in order and as part of the last exhibit, I think we can probably attach it——

The Court: Put it all together.

(The pressure chart in question was thereupon received in evidence as part of Defendants' Exhibit 24.)

Mr. Scampini: I also offer in evidence, although the whole book is in evidence, the log page under date of October 5, 1943, which reads under the phrase of "Remarks":

"Ran Johnston test in hole."

The Court: It may be admitted.

(The page of the log book dated October 5, 1943, was thereupon received in evidence and marked Defendants' Exhibit 25.)

Mr. Scampini: I now show you here a ticket No. 6757, which has already been admitted in evidence as Plaintiff's Exhibit No. T, and also Ticket 6758, which is a continuation of the 6757, and I will ask you to look at it and state what that is and what it means?

(Testimony of T. M. Johnston.)

A. Well, it merely means that on the tenth month and twentieth day these people perforated the casing at 4,251 feet, and after it was perforated, called upon us to run our test above those holes and test for water shut-off, and we did run the test and it blew for two minutes pretty good and then for one minute a little blow and then no blow at all. We left the tester set one hour, [342] which is required by the State, and when we pulled the tester out of the hole they had 42 feet of gassy drilling fluid and no water was present. So I imagine that the State of California gave you a satisfactory water shut-off and then you could go ahead, and the next day you shot some additional holes at 4,240 and we ran the same kind of test on that well. On our test after shooting the additional holes it says here that it flowed.

Mr. Bourquin: Flowed?

Mr. Scampini: What do the words "It flowed" indicate to you?

A. Well, the thing came in, came out.

Q. Speaking of a water shut-off, isn't it customary and usual to encounter water sands in the course of drilling wells? A. Yes.

Q. The water sand are shut off?

A. Yes, by means of casing and cementing over them.

Q. In order to ascertain whether the water sand has been effectively shut off, we usually make the test that you have described and which was made on the 20th day of October in this case?

A. Yes. [343]

(Testimony of T. M. Johnston.)

Q. On the 21st then you made the test to ascertain whether or not the formation was productive of gas in this case?

A. That is what the ticket indicates, yes.

Q. I show you here the pressure charts for October 20th and October 21st and ask you to look at them and state what they reflect.

A. Well, on October 20th the pressure chart is a perfect indication of an absolutely dry test, in other words, the holes were shot into the formation. The cement had made a perfect bond between the casing and the side walls of the hole, and there was no water entry, and so therefore you have no pressure. If you have an entry of water into the drill pipe it will measure the weight of the fluid on the chart. Here the fluid is absolutely zero.

Q. Looking at the one of October 21st, what does that reflect?

A. We set the packer on that date after additional holes were shot at 4240 feet. We left it set $3\frac{1}{4}$ hours, and it flowed for one hour. We had a flow pressure of between five and seven hundred pounds—that is, with everything open—and then they closed the well in and let the pressure build up below the packer. After the space between the packer and the bottom of the hole filled the tools were opened. It was subjected to atmospheric pressure, and then as your fluid entered the hole, entered the drill pipe through the holes that were shot in the casing, this pressure chart indicates a pressure up to 1100 pounds when it was closed in.

(Testimony of T. M. Johnston.)

Now, how many holes were shot I don't know. It just says, "Shot at 4200 feet." [344]

Q. Do the tickets or the pressure chart indicate any gas coming from the formation?

A. Well, yes.

Q. What does it indicate in that respect?

A. Let me see the ticket, will you please? Well, it does say here, "Flow test," on the ticket. Ordinarily in all cases, if there is any fluid, water, oil or mud, within the drill pipe when it is taken from the hole, they will note it on the ticket. So I assume that this pressure was caused by just a gas blow with no fluid present.

Mr. Scampini: I offer in evidence as our exhibit next in order tickets Nos. 6757 and 6758, bearing the dates of October 20, 1943, and October 21, 1943, with the accompanying pressure charts of the Johnson formation test, and ask that they be marked as one exhibit.

Mr. Bourquin: Aren't those the same as the exhibits earlier introduced in evidence?

The Court: The charts for October 20th and 21st are Plaintiff's R, S and T. I do not know whether they are the same or not.

Mr. Scampini: The last two, the one of October 20th and October 27th, are the same.

Mr. Bourquin: Which are you offering now?

Mr. Scampini: The last one is the one of October 20th and 21st. This is the one of October 27th. The first one was October 5th. [345]

(Testimony of T. M. Johnston.)

Mr. Bourquin: May I see it? What is the one you offered?

Mr. Scampini: Government's Exhibit T.

The Clerk: You have some of my exhibits, Mr. Scampini.

Mr. Scampini: Yes.

The Clerk: I can't find them for Mr. Bourquin.

Mr. Scampini: This last one I offered is a Government exhibit.

The Clerk: You are re-offering then this Government exhibit?

The Court: You are getting confused offering the same exhibit, aren't you?

Mr. Scampini: I see they are already in evidence on the Government's side. The one of October 5th is the only one that had not yet been offered.

The Court: I have a record that it was Government's Exhibit R.

Mr. Scampini: Government's Exhibit R is the one of October 27th, your Honor. I have it in my hand.

The Court: That is Government's Exhibit N, isn't it? You offered some charts, Mr. Bourquin.

Mr. Bourquin: Yes, your Honor.

The Court: After you offered the Johnson test tickets. There were charts of the Johnson test. They were offered as Plaintiff's Exhibits R, S, and T, and I marked them at the time as being of the dates October 5th, 20th and 21st. [346] If you are offering the same exhibits it is going to be confusing.

(Testimony of T. M. Johnston.)

The Clerk: May I say this, your Honor? Exhibit R is identical to half of Exhibit 24. He offered two parts. Exhibit R is identical with half of it.

Mr. Scampini: Mr. Bourquin, for the purpose of clearing up the record, the chart of October 27th, which is already in evidence as Plaintiff's Exhibit R, consists of two portions, and you had only received from me one portion. I will now show you the second portion, which I just ran into myself, because the test was continued on October 28th.

Q. I will now show you Plaintiff's Exhibit R, which appears to be a test made by the Johnson Oil Field Service Corporation, under date of October 27th and 28th, being tickets numbers 6201 and 6202.

I will now ask that these tickets be marked as part of Plaintiff's Exhibit R, your Honor, because they are attached to the pressure chart.

The Court: I do not know. There is another exhibit that is Plaintiff's Exhibit N, which is the test. I am familiar with these matters. Where is that exhibit? The tickets are separate, or the charts were separate from the report of the test, itself. Mr. Bourquin offered the Johnson test of October 27th and it was marked Exhibit N. That was the report of the test. [347]

Mr. Scampini: According to my indications on the back here, it is Exhibit R.

The Clerk: Mr. Scampini is now offering Plaintiff's Exhibit Q and asking that it be marked as part of that.

(Testimony of T. M. Johnston.)

The Court: They are already in evidence, Mr. Scampini. You had better get that straightened out at recess time. You have taken part of the plaintiff's exhibits and are asking that they be offered in evidence as defendants' exhibits, and that may be confusing.

Mr. Scampini: It so happens that the plaintiff just subpoenaed and asked that I produce the records. I delivered them to him and he offered them.

Q. I ask you to look at tickets 6201 and 6202 and state what they are, and what they reflect, and what they represent.

A. 6201 is a ticket indicating that our equipment was run and the packer set at 4240 feet to test an interval that had been perforated between 4280 and 4290, an interval of ten feet to be tested.

Q. (By the Court): What is the date of that?

A. 10/27/43.

Q. October 27th?

A. Yes. The blow—a good blow throughout the test, and gas was to the surface in seven minutes. That means after we ran the equipment in the hole and set the packer, the inside of that drill pipe was at atmospheric pressure, and we set the packer, and then by a patented means we open the tool and that exposes that area below the packer to [348] atmospheric pressure, and the gas that came into the casing below the packer through the interval that was perforated, through the hole that was perforated in the interval between 4280 and 90 came on into the drill pipe and flowed out to the surface,

(Testimony of T. M. Johnston.)

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(Testimony of T. M. Johnston.)

and it had a strong blow of air for seven minutes. That drill pipe naturally is filled with air, and anything that comes in has to force the air out before it can reach the surface. So it took seven minutes to push all the air out of the drill pipe and then the gas showed up. The gas was the force propelling the air out of the drill pipe.

Q. To make a long story short, is this the test that you got 100,000 cubic feet a day rate on?

A. Estimated 125,000 cubic feet.

Q. 125,000. We know what test you are talking about now.

Q. (By Mr. Scampini): What pressure does the chart indicate was found at the bottom?

A. Well, I don't have the chart.

Q. I show you here the pressure chart of October 27th and I will ask you to look at it and state what it indicates in respect to the pressure found at the bottom of the hole.

A. Well, it shows here that the flow period, the actual times the tool was left open, was 18 hours, and the flow pressure—they open the tool and then it apparently it blew by heads, that is, the gas would break in, then it would subside, and it would surge again, and when it would surge the pressures [349] would increase, and they went up to approximately 1000 pounds, and then we closed the tool in, and the pressure had a build up to about slightly over 2000 pounds, and then the tool was opened and fell back down to atmospheric pressure, the pipe being dry, and then the next time we opened the tool, let it set

(Testimony of T. M. Johnston.)

for about sixteen hours, and it had a build-up—it fell to approximately 500 pounds, and then the final pressure, when the packer was pulled loose and the drill pipe taken from the hold, was about 1250 pounds.

Q. Based upon your experience, can you state whether or not a pressure built up to 2100 pounds while the well was closed in is considered a high pressure zone or a low pressure zone?

A. Well, a 2000-pound pressure on a 4000-foot well I would say was a good pressure. As a matter of fact, if you had much more pressure than that you would have to considerably weight your mud, put considerable weight in your mud to keep the fluid from over-balancing and flowing out.

Mr. Scampini: That will be all. You may take the witness. I can't offer this in evidence because it is already in evidence on the plaintiff's side. At the same time I want these charts to be in evidence on the defendants' side.

The Court: It does not make any difference, Mr. Scampini. They are in evidence. It does not make any difference who offers them. They are there.

Mr. Bourquin: Shall I proceed, your Honor?

The Court: Can you conclude before noon?

By Mr. Bourquin:

Cross-Examination

By Mr. Boufquin:

Q. The last question that counsel asked you, he asked you from your experience was that a high pressure or a low pressure?

(Testimony of T. M. Johnston.)

You said it was a good pressure. Please tell us whether it was a high pressure or a low pressure?

A. Well it would not be a high pressure for a 10,000-foot well, but for a 4200-foot well, yes, I would say it was a high pressure.

Q. In other words, what was encountered there on October 27, 1943, was a high pressure?

A. Yes, sir.

Q. How much is atmospheric pressure——

A. Nothing.

Q. In pounds per square inch.

A. That I don't know.

Q. Have you any idea? A. No.

Q. This pressure that you encountered at the bottom of the hole on October 27, 1943, was in excess of 2000 pounds? A. Yes, sir.

Q. Doesn't your chart indicate that it was in excess of 2100 pounds? Doesn't the chart indicate it to be about 2125? A. Something like that.

Q. The tests that you testified to here this morning and that you have interpreted for us were all made in the operation of 1943? A. Yes, sir.

Q. None of them were made in 1944?

A. Well, no. [351]

Q. Your outfit did not return to the well and make any tests in 1944, did you?

A. Well, I don't know whether we did, or not.

Mr. Scampini: I will stipulate that they did not.

The Court: That is correct, isn't it?

Mr. Scampini: Right. I will stipulate that no Johnston formation test was made in 1944.

(Testimony of T. M. Johnston.)

Q. (By Mr. Bourquin): And none was asked for?

A. I don't know about that, whether it was, or not. I travel all over the country, and they could have called in and asked for a test, and for some reason we could not have made it, or they could have had trouble and not been able to make it. I don't know about that.

Q. The sum and substance of the tests that you know about and have told us about here this morning is the succession of tests that were made by your company in October, 1943; that is correct, isn't it?

A. That is right.

Q. Which on successive tests shows that at depths ranging in the neighborhood of 4200 feet various pressures were encountered, is that correct?

A. Yes, sir.

Q. The highest of which was about 2125 pounds; that is correct, isn't it?

A. Yes, sir.

Q. And the estimated volume of gas there was rated at from 100,000 to 125,000 cubic feet per day?

A. Yes, sir.

Q. That is correct?

A. Yes, sir. [352]

Q. That is all the tests showed, isn't it?

A. Yes, sir.

Mr. Bourquin: That is all.

Q. (By the Court): A well with that much pressure could produce a lot more gas than that per day, couldn't it?

A. Yes, I would say it would be able to produce considerably more. As a matter of fact, the 125,-

(Testimony of T. M. Johnston.)

000 cubic feet was merely an estimation. From my experience on other wells that we have tested over the country, and to see the volume of gas that was coming out, if I, myself, had made the estimation I would have estimated it to be more than 125,000 cubic feet.

Q. But it was not there?

A. That is what the man who made the estimate said, and that is what was put on our ticket. After all, I did not have equipment to test it with; just an estimation is all the man made.

Q. (By Mr. Bourquin): You will concede that you can have pressure without volume, won't you?

A. Yes.

Q. But pressure of 2125 would be sufficient pressure to produce a commercial volume of gas if there was a commercial volume present? Wouldn't that pressure be sufficient for that?

A. Well, we might have been able to increase the size of the bean in the bottom of the tool——

Mr. Bourquin: I will interrupt and ask that that be stricken as not responsive and ask the witness to answer the question.

The Court: Of course, it may have something to do with it. [353] The aperture has something to do with it, but I think you can get an answer to your question.

Q. (By Mr. Bourquin): Can you answer "Yes" or "No": Is a pressure of 2100 pounds sufficient to produce a commercial volume of gas if a commercial volume is there?

(Testimony of T. M. Johnston.)

A. I would say it would be, yes.

Q. It is higher than normal, isn't it, for 4200 feet?

A. That is right.

Q. What is the normal pressure for 4200 feet?

A. Well, I don't know.

Q. Do you know what normal pressure is to be measured by? Do you know its relationship to the hydrostatic head of the water which has collected that gas?

A. We cut the hydrostatic head. After a packer is set and the set is in progress, the hydrostatic head has absolutely nothing to do with the test.

Q. Do you know what the hydrostatic pressure of a column of water of 4200 feet would be?

A. I can take this chart and show you what it would be in that particular well.

Q. Do you know what it would be?

A. You say water?

Q. Yes, a hydrostatic head of water 4200 feet.

A. It would be approximately 2100 pounds.

Q. 2100? A. That is right.

Q. Wouldn't it run around .4 of a pound a foot? Wouldn't it be about 1700 pounds at a depth of 4200?

A. I said approximately. [354]

Q. Isn't 2100 a normal hydrostatic pressure at 5000 feet?

A. I was speaking of drilling fluid, which is not water. They always have mud in it, and we figure it in the oil fields about a half a pound per foot in depth. If you have a 5000-foot well with normal drilling fluid, where you have not encountered any

(Testimony of T. M. Johnston.)

excessive pressures, you have approximately 2500 pounds hydrostatic head of mud.

Q. Of mud?

A. That is right, of drilling fluid.

Q. Who is the man who made these tests?

A. I wouldn't know.

Q. Could you know from the tickets?

A. Oh, I made some of the tests, yes.

Q. You made some of these tests?

A. Yes.

Q. Did you make the test of October 27, 1943?

A. Let me see that, will you? Yes, sir, I made that test.

Mr. Bourquin: That is all.

Redirect Examination

By Mr. Scampini:

Q. You were present when the gas coming from the well was seen by you, weren't you?

A. Yes, sir.

Q. Can you state what your opinion is as to the volume of gas coming from that well?

Mr. Bourquin: Your Honor, is this proper redirect examination? The witness is here to testify from scientific tests. We object to this as calling for an opinion and conclusion on a matter which appears to be the subject of scientific determination. [355]

Mr. Scampini: I am going to prove the test as to volume was not made by Mr. Johnston, nor by the Johnston Formation Tests, but was made by certain

(Testimony of T. M. Johnston.)

individuals who were present there; that the Johnston Formation Test does not test the volume of gas being produced, but merely tests the pressure and whether or not the formation is productive.

Mr. Bourquin: It is on the report, your Honor, and I would question whether this man would have——

The Court: You had better let this matter go until after lunch. You may be in a way cross-examining your own witness.

Mr. Bourquin: He is.

Mr. Scampini: I do not think so, your Honor.

The Court: Let us defer the matter until after the recess. We will take the noon recess at this time, ladies and gentlemen. Please return at two o'clock. Bear in mind the admonition of the court.

(A recess was thereupon taken until two o'clock p.m.) [356]

Afternoon Session, January 28, 1947

2:00 o'Clock P.M.

The Court: The jury is present. You may proceed.

T. M. JOHNSTON

recalled on behalf of Defendants:

Redirect Examination

By Mr. Scampini:

Q. Mr. Johnston, does the test made by the M. O. Johnston Oil Field Service Corporation in the testing of wells, and particularly in the testing of Faria Well No. 1 on October 27, 1943, does that extend to testing the formation of gas being produced therefrom during the course of your test?

Mr. Bourquini: We submit the report is the best evidence.

The Court: What is the purpose of the question?

Mr. Scampini: The purpose of it is to show that in the course of making a Johnston formation test other experts are called in by the Johnston Formation Service to determine the volume of gas or oil coming out of these small openings.

The Court: You mean, what you are going into is the technique by which it is determined, or the amount per day of gas that can be produced is determined?

Mr. Scampini: Well, I propose to go into it to merely show the notations found on the ticket for October 27 as to the estimate of gas being produced are the notations of these [357] other experts that

(Testimony of T. M. Johnston.)

are there making a test as to the volume and who report the estimate to him.

The Court: Well, in a Johnston test, don't you stand behind your test? When you tell somebody you make a test and his property is producing 125,000 cubic feet of gas a day, do you report that?

A. (By the Witness): No, absolutely not.

The Court: What do you get paid for?

The Witness: We get paid for running the mechanical equipment. In other words, the companies that we perform our services for have their own engineers on the job and they get all that data.

The Court: You mean you only furnish the equipment?

The Witness: That's right.

The Court: Well, I think Counsel should be permitted to develop the manner in which the test is taken.

Mr. Scampini: Will you read the question, Mr. Reporter?

(The question was read by the reporter.)

A. (By the Witness): Well, when we run our mechanical equipment and set the packer above the producing formation we allow anything that comes through the perforations in the casing to reach the surface and the company to whom we are giving this service, or selling this service, usually have their own engineers or outside engineers there to make estimates or scientific tests to arrive at a figure of production, [358] whether it be gas or oil or water.

(Testimony of T. M. Johnston.)

Q. (By Mr. Scampini): Did that take place in this instance?

A. Well, there were two young fellows there who gave me this estimate.

Q. The estimate that is on your ticket for October 27 and 28, whose estimate is that?

A. The two young fellows who were there and supposedly gas engineers, I never saw them before or haven't seen them since.

Q. You put down the estimate that was given or furnished you by these two engineers, is that correct? A. Yes.

Mr. Bourquin: I may say, Counsel called this witness. He has brought him some distance, I understand. He put him on the stand. He produced his reports. He offered them in evidence as his evidence in this case. Now, he has come to a point in the examination of his own witness where he wants to impeach the reports. I object on the ground it is cross examination of his own witness. It is not redirect and on the ground stated before that the reports themselves are the best evidence.

The Court: On the subject of the objection that it is not really proper redirect examination, on cross-examination Counsel did not question the accuracy of the reports.

Mr. Scampini: I am not questioning the accuracy of the reports. I am laying the foundation for proving the volume estimate is not the volume estimate of the witness on the [359] stand, but that the volume estimate that is on the ticket is furnished to

(Testimony of T. M. Johnston.)

him by these other experts, and I am not questioning the accuracy of their findings, but it is not the estimate of the witness on the stand, nor am I trying to impeach him.

Mr. Bourquin: Why did Counsel for the Defendants bring Mr. Johnston to San Francisco and put him on the witness stand? They had these reports. They were there when they were made. They did not need him to identify them. Now they say they don't want to accept the material in the reports. That is the effect of what Counsel just indicated.

The Court: I understand from what Counsel just said that he stands upon the showing that there was a production of 125,000 cubic feet a day; he merely wants to show how the test was made.

Mr. Bourquini: Oh, I misunderstood.

Mr. Scampini: That's right, your Honor. That is all, no further questions.

The Court: Any further matters of this witness?

Mr. Bourquin: No further questions of the witness.

E. A. BENDER

called as a witness on behalf of the Defendants; and having been first duly sworn, testified as follows:

The Clerk: Will you state your name to the Court and Jury? [360]

A. E. A. Bender.

(Testimony of E. A. Bender.)

Direct Examination

By Mr. Scampini:

Q. Mr. Bender: What is your business or occupation?

A. Oil well drilling contractor and oil producer.

Q. What is the name of the concern with which you are connected?

A. Bender Oil Operations.

Q. Where do you operate?

A. Bakersfield.

Q. Do you, in the course of your activities, drill oil wells under contract? A. Yes.

Q. How long have you been engaged in the business of drilling oil wells?

A. About twenty years.

Q. Have you ever drilled any natural gas wells?

A. Yes.

Q. Where have you drilled natural gas wells?

A. In Kern County, various places.

Q. Have you ever drilled any natural gas wells in or around the district of Rio Vista or McDonald Island? A. No.

Q. Or any part of Northern California?

A. Oh, yes, I have; that's right.

Q. Where have you drilled in northern California? A. In the Willows district.

Q. How long have you been engaged in the drill business? A. As a contractor?

Q. Contractor or—— A. Since 1935. [361]

Q. Have you drilled any wells for the Government, oil wells? A. Yes.

(Testimony of E. A. Bender.)

Q. Have you owned or operated any oil properties? A. Yes.

Q. How long have you been operating oil properties? A. You mean as a producer?

Q. Yes. A. About three years.

Q. Did you have occasion to visit the property of Cal Bay Corporation at or about November of 1944?

A. Yes.

Q. Under what circumstances did you visit those properties?

A. As scouting for possible gas territory.

Q. Did you know Mr. Faria at that time?

A. Yes.

Q. When had you met Mr. Faria?

A. About 1942 or '43.

Q. When did you first appear on the properties of the Cal Bay Corporation?

A. It was the day before Thanksgiving, 1944.

Q. What was going on at that time?

A. They were drilling.

Q. What depth were they drilling, if you know?

A. Close to five thousand feet, I think.

Q. What did you observe?

A. I talked to the crews and I saw they were making hole slowly and they had a load of mud, heavily mudded. I talked with the crew at length and studied the conditions of the well.

Q. Did you make any observations of the mud coming out in the course of drilling?

A. Yes. The mud was in very nice condition, there were slight gas bubbles, not an unreasonable [362] gas cut with regard to that.

(Testimony of E. A. Bender.)

Q. What equipment was being used by Cal Bay for the purpose of drilling this well?

A. A standard steam rig, rather oil, but quite reliable.

Q. Have you any opinion or knowledge as to the reasonable rental value of standard steam drilling outfits prevailing at that time?

Mr. Bourquin: We will object to this line of testimony, your Honor, on the ground it is irrelevant and immaterial, and no foundation has been shown in this sense, that what it would cost to drill a well would have no bearing on the question of market value of the lease until it was first shown there was something at the end of the drilling that would justify, let's say, a continuation of the well.

The Court: Your objection goes to the order of proof? You say there has not been any foundation laid?

Mr. Bourquin: Well, it goes to both, your Honor. I really feel that when we come to the question, as we have to, in this case, of market value, whatever it cost to make the property of some value in the future, it is speculative testimony, except that we are trying to arrive at the worth of the property.

The Court: When it comes to testimony as to the value, the person who evaluates may give the factors including cost, will give reasonable cost for drilling the well and the [363] equipment, that he may take into account. It is something separate as to valuation.

(Testimony of E. A. Bender.)

Mr. Scampini: I agree with your Honor's theory as it being the reasonable lost for drilling Faria Well No. 1, which would have to be taken into consideration by any expert in valuing the leasehold, that would have to be fixed by someone who is skilled in the business of drilling wells. I intend to use Mr. Bender for that purpose only.

The Court: With that statement of Counsel as to his purpose, I will allow the question. The objection will be overruled.

Mr. Bourquin: Isn't it understood, your Honor, as heretofore, that rulings are deemed to be excepted to? That is repetition to take an exception.

Mr. Scampini: Yes.

Mr. Bourquin: If your Honor is agreeable. We have done that heretofore in this court, exceptions are deemed to be taken.

The Court: Yes. I think Judge MacCormack wrote a decision in Los Angeles some years ago in which he said that that was an abortive procedure, but as far as I am concerned, I think it is silly to have to bob up and say you wish to take an exception. It is agreeable to me that both Counsel may have an exception to any ruling and it *may* *deemed* to be taken. [364]

Mr. Scampini: Yes. There is a debate as to whether the new rules include the necessity of taking exceptions.

The Court: Well, condemnation proceedings are excluded from the rules.

Mr. Scampini: We will stipulate there may

(Testimony of E. A. Bender.)

always be deemed an exception. Mr. Reporter, can you find the question? If so, will you read it?

(The record was read by the reporter.)

A. (By the Witness): You mean on that drilling?

Q. (By Mr. Scampini): Yes.

A. A rental usually, a rig of that size would rent for \$150 a day.

Q. How long did you remain on the property of the Cal Bay Corporation?

A. On the first day possibly an hour or an hour and a half.

Q. Then did you go back? A. Yes.

Q. Did you go back to the property?

A. About three or four or five days later.

Q. What had occurred in the meantime?

A. The first report we had when we got back was the drill pipe was stuck and they were circulating, the mud was circulating, and they were making preparations to spot oil to loosen the drill pipe.

Q. Did you notice any change in the appearance of the mud when you came back at that time?

A. Yes, I took particular pains to look at the mud and found it was more fluffed with the gas ends and had showings of oil in it. I don't know whether [365] that was formation oil or oil that had been spotted or what?

Q. Mr. Bender, based upon your experience as a drilling contractor, can you state, or have you any opinion as what would the reasonable cost of drill-

(Testimony of E. A. Bender.)

ing the Faria well in the years 1943 and 1944 at the location where it was being drilled to a depth of 4,975 feet?

Mr. Bourquin: Same objection, your Honor.

The Court: Same ruling.

A. (By the Witness): You mean a contract drilling?

Q. (By Mr. Scampini): Yes, the reasonable cost figure?

A. Wildcat territory like that, it is difficult to establish a flat rate. Contractors do not like to take jobs on a flat contract basis. As a contractor I studied the situation at the time and I estimated \$150,000 to 5,000 feet, figuring to make a profit if everything goes well mechanically; if it does not go well mechanically a contractor has to sustain a loss.

Mr. Scampini: No further questions.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Bender, when you gave us your opinion as to rental, to the reasonable rental value of drill equipment, are you taking into account the condition of the equipment? A. Yes.

Q. That would be a factor, of course, in determining what that particular piece or set of equipment ought to rent for? [366]

A. That's right.

Q. Did you know this equipment at that time that you saw in operation on that well in 1944; did you know that equipment?

(Testimony of E. A. Bender.)

A. I did not particularly study it. I knew it was a steam rig which we don't use much any more at the present time because they have become obsolete, and had a good set of drill pipe, if I remember correctly, and drill pipe at that time was renting for a cent a foot a day, daily rental, and Mr. Faria had an awful lot of auxiliary equipment. The bare machinery without all the auxilliary equipment would rent for \$100 a day possibly, which is a condition in all rigs, regardless——

Q. Pardon me. Do you understand the question? Did you know where that particular equipment had come from?

A. I know the man that sold it to Mr. Faria in the first place, yes.

Q. Did you know something about its condition?

A. No, I did not know the mechanical condition at all.

Q. Were you interviewed by an agent of the Federal Bureau of Investigation? A. Yes.

Q. The early part of the month, Mr. Bender?

A. Yes.

Q. Where was it the FBI man interviewed you?

A. My office.

Q. In Los Angeles? A. Bakersfield.

Q. What day was that, please?

A. I don't know; possibly sixty days ago.

Q. Was it the early days in November of last year? [367]

A. I don't recall; possibly around December.

Q. Did the man interview you on more than one occasion? A. Just once.

(Testimony of E. A. Bender.)

Q. Do you recall, was it Mr. Peters, Roy Peters, of the FBI, who interviewed you?

A. I don't recall the name.

Q. Did he show you his credentials?

A. Yes.

Q. And identified himself as an agent of the FBI?

A. Yes.

Q. And told you he was looking into this matter?

A. That's right.

Q. On that occasion, did you tell Mr. Peters that this equipment had been unloaded on the Cal Bay Corporation by Harold Henry?

A. That's right.

Q. Did you tell him that the whole thing originated in a fraud, or a fraudulent desire by Henry to unload some old machinery?

A. I think I made the statement that, "I think that Mr. Faria did not get his money's worth."

Q. Did you tell him that Mr. Henry had sold Mr. Faria the idea that there was some oil up there where he could use that rig?

A. No. I think—let's see—May I have that question again?

Mr. Bourquin: Will you read the question, please?

(The question was read by the reporter.)

A. (By the Witness): No, I don't know a thing about that.

Q. Did you tell Mr. Peters that Henry had convinced Mr. Faria there was oil there merely to unload his old machinery on him? [368]

A. I don't know a thing about that.

(Testimony of E. A. Bender.)

Q. What do you mean, you don't know a thing about it; what do you mean?

A. That Mr. Henry would have told me he was unloading this on Mr. Faria.

The Court: No. He asked you whether you told the FBI agent that.

A. (By the Witness): No.

Q. (By Mr. Bourquin): You did not tell him that. Did you tell him that in substance, that Henry had convinced Faria there was oil in this locality in order for him, Henry, to unload his machinery on Faria; did you tell Mr. Peters that?

A. I don't think that he should take that attitude.

Q. Please answer. Did you tell him that?

A. No, I did not.

Q. You did not? A. No.

Q. Did you tell Mr. Peters that Henry had in fact told you that he had located Faria as a sucker for his own machinery?

A. Well, words to that effect, yes.

Q. You did tell Mr. Peters that?

A. Not in those words. Mr. Henry—May I repeat what Mr. Henry told me?

Q. Go ahead.

A. That he had a party in the north somewhere that is paying him big rental on the equipment and I presumed it was Mr. Faria; at the time I did not know Mr. Faria.

Q. Let me go back. Did you tell the Agent of the

(Testimony of E. A. Bender.)

FBI that [369] Mr. Henry had told you once that he had located Faria as a sucker for his own machinery?

A. May I have that question again?

(The question was read by the reporter.)

A. (By the Witness): I never made that statement. I could answer that in a different way, though.

Mr. Bourquin: May I have the last part of the answer?

(The record was read by the reporter.)

Q. (By Mr. Bourquin): Well, I am only interested in whether he made the statement.

A. The word "sucker" is——

Q. What?

A. The word "sucker" is a very broad statement and where this agent possibly assumed that that was said in substance, but it was not intended that way.

Q. Well, you are going to tell us what the agent heard, but we want you to tell us what you said to the agent. You understand the question in that respect, don't you? A. That's right.

Q. At the same time did you tell the agent, Peters, that you had been in that locality in November, 1944, about the 23rd, at the opening of the hunting season? A. That's right.

Q. In other words, you told him that at the opening of the hunting season you were in that locality and made a visit to that well? A. True.

Q. And that that was about November 23?

A. Yes.

(Testimony of E. A. Bender.)

Q. Is that correct?

A. I told him it was the day before [370] Thanksgiving, whatever the date was.

Q. Did you tell him that at that time they were slowly rotating in the hole, but having trouble with the pipe?

A. No, not the first. On the first visit they were drilling ahead slowly and apparently had no trouble.

Q. You remembered, did you then, that the first visit on the 23rd, or the one you took at the opening of the hunting season, you did not tell the agent, Peters, that at this well they were slowly rotating in the hole, but having trouble with the pipe?

A. That's right.

Q. You did not tell him that on that occasion?

A. They were rotating slowly and had no trouble with the pipe.

Q. You did not tell him they were having trouble with the pipe? A. No.

Q. Did you tell him you saw the well again two days after the blowout?

A. No; the well had not blown at the second visit. The pipe was stuck.

Q. You did not tell him you saw it again two days after it blew out? A. No.

Q. Did you see it two days after it blew out?

A. No; I never saw it after it blew out.

Q. Did you tell the agent of the FBI on the occasion we are referring to that two days after the blow-out you saw oil sand on the hillside and observed evidence of the presence of light oil in commercial quantity? A. No. [371]

(Testimony of E. A. Bender.)

Q. Did you tell him that?

A. No; that was hearsay; that was what they said later on.

Q. Did you also tell Agent Peters at that time that any competent man would have known they could not get oil there because that was gas country?

A. No, I did not tell him that.

Q. Now, Mr. Bender, you drill wells, don't you?

A. Yes.

Q. So far as this question of the cost to drill a well, that will depend somewhat on the well, will it?

A. That's right.

Q. You drill a well south of Bakersfield, or you did drill one that was completed about last March, didn't you, with a Mr. Hoover? A. Yes.

Q. You drilled that well to thirty-six or thirty-seven hundred feet?

A. To about forty-two hundred, I guess, something like that. [372]

Q. In the course of that drilling you encountered rainbow-colored sand; that is correct, isn't it?

A. In most wells we do, yes.

Q. You did in that one? A. Yes.

Q. You encountered considerable gas, didn't you?

The Court: You will have to answer up. The reporter can't get your answer when you shake your head.

The Witness: The fact is, you see that in all oil territory. I presume we did, yes.

(Testimony of E. A. Bender.)

Q. (By Mr. Bourquin): You did encounter considerable gas?

A. Encountered considerable gas.

Q. Did you abandon that well or did you bring it into production?

Mr. Scampini: We object to this line of examination as not proper cross-examination.

The Witness: The fact is, with Mr. Hoover I dripped two wells——

The Court: Just a moment, Mr. Witness. Counsel has objected on the ground it is incompetent, irrelevant, and immaterial. What is the point of this inquiry? Is it directed to his competency to testify?

Mr. Bourquin: It was really on the question of cost, and perhaps I did go over the fence a little bit in questions I just asked in that they are not proper cross. I will abandon that line of questions and ask him this:

Q. What did it cost to drill that well that you drilled south of Bakersfield with Mr. Hoover last March? [373]

Mr. Scampini: We will object to the question on the ground that the cost of drilling a well in Bakersfield has no comparable relationship to a well being drilled for the first time in a new location in the hills above Contra Costa, because the situations are not comparable for the purpose of determining cost.

(Testimony of E. A. Bender.)

Mr. Bourquin: I think that goes to the weight.

The Court: I think it goes to the question of the witness' qualifications to give an opinion as to the cost of drilling this well. I will allow it. Overruled.

Q. (By Mr. Bourquin): What was the cost?

A. If we completed the well it should have been between ten and twelve dollars per completed foot.

Q. I want to ask you what you spent in that particular well.

A. Could I ask which well it was? Could I ask Mr. Hoover over here which one it was?

Q. Which one are you talking about when you said you drilled four?

A. In the Edison District, which we did not complete.

Q. How much did that cost?

A. I think we had that contract for four and a half a foot for the actual drilling.

Q. What did it cost?

A. At that rate it would be about \$18,000 for the drilling—not the casing of the well, just the drilling.

Q. What was the over-all cost? Was it about \$21,000?

A. It should have been about \$10 a foot, or if it was 4100 [374] feet, it would be actually \$41,000.

Q. \$41,000? A. Yes.

Mr. Bourquin: I think that is all.

(Testimony of E. A. Bender.)

Redirect Examination

By Mr. Scampini:

Q. Mr. Bender, does the criterion of \$10 a foot apply in the case of drilling a well on an entirely new structure which has not been drilled before?

A. No.

Q. When you drill on an entirely new structure you haven't any past history to go by, have you?

A. That is right.

Q. You have coring to do, which you may not have when you are drilling in well known structures?

A. That is right.

Q. You do not know the nature of the formation that you may penetrate in the course of drilling a new structure?

A. That is right.

Mr. Bourquin: Isn't this leading and suggestive? Or do you want the witness to testify? We will object to it, your Honor, on that ground.

Mr. Scampini: I do not think this witness need be led or suggested.

Mr. Bourquin: Then why do it?

Mr. Scampini: We will try to avoid it. I think the information will be the same.

Q. When you go out to bid on a contract for the drilling of a well on a new structure, what factors do you take into consideration in estimating the cost of drilling that well? [275]

Mr. Bourquin: I object to that as not proper redirect, your Honor. I do not have a serious objection, but I make one in the interest of time.

(Testimony of E. A. Bender.)

He has already offered evidence from this witness as to cost. Now we come to redirect and he wants to go further into the same subject.

The Court: Strictly speaking, it is not proper redirect, but if you want to ask the witness what factors he took into account in giving his estimate on the ground that you did not ask him that on direct examination, I think that can be done at this stage.

Mr. Scampini: I will do it on that ground, your Honor.

The Witness: First we take a geological report and hope that the report is correct, and know the nature of the formation that we go through. Then we compile data from the nearest well drilled in that community as closely as we can get. If, let us say, we have a well within a mile, we have very good history.

The Court: I think what counsel wants to know is what factors you took into account when you gave your estimate of \$150,000 in the case of this well.

Mr. Scampini: That is right.

The Court: That is what counsel is interested in: What were the things you took into account?

The Witness: The knowledge or the information that I had on the well to the depth that this well had been drilled; [376] all the troubles that they had encountered, less the more efficient equipment that we put on a well, and possibly better engineering, that could cut the cost considerably, because of the experience already gained by the type of information that they had encountered.

(Testimony of E. A. Bender.)

Q. (By Mr. Scampini): If you had gone there to bid for this job of drilling the Faria well from its inception and did not have any past experience to go by, what factors would you consider in making your bid?

A. I would have made a bid on only one basis, and that would have been on a daily operating cost, which in this instance would have been about \$750 per day.

Q. In the case of the well that was drilled by you at Edison, that cost and over-all figure of \$41,000, did you have any unknown factors involved? A. Very few.

Q. Had the structure or the surrounding territory been drilled prior?

A. Oh, yes, yes, many wells.

Q. Did you have any history to go by as to the formations which you expected to penetrate?

A. I had the experience of about thirty wells that I personally drilled for other companies in the immediate district.

Q. When you have that experience and that knowledge, isn't it normal that the cost is reduced in connection with the drilling of such wells?

A. Well, we will know within ten per cent of what our cost will be.

Mr. Scampini: That is all. [377]

(Testimony of E. A. Bender.)

Recross-Examination

By Mr. Bourquin:

Q. Mr. Bender, you said you drilled a well up in Willows, is that correct? A. Yes.

Q. When and where?

A. In 1942, for the Ohio Oil Company.

Q. What was the name of the well?

A. There are only four gas wells drilled there. I forget the name. The wells are always named after the landowner that the well is drilled on, but it was drilled by the Ohio Oil Company.

Q. It was drilled by the Ohio Oil Company?

A. Yes.

Q. You say there are only four gas wells that have been drilled up there?

A. I think we drilled the fourth one.

Q. How did that come out?

A. The well we brought in was a rather small well.

Q. What depth? A. About 3200 feet.

Q. What happened to the well afterward?

A. I don't know what they have done with it. I think they are producing and selling gas to the town of Willows——

Q. Do you know that?

A. I am not sure. I presume they are.

Q. What did you spend to drill that well?

A. We did that for the Ohio Oil Company. I forget the contract price, but I know we did most of our work on a daily basis.

(Testimony of E. A. Bender.)

Q. Can't you remember the name of that well?

A. I don't recall. We drilled a hundred wells a year at that time, and it is difficult to remember all of them.

Q. Was it the Willard?

A. I presume it was. [378]

Q. Was it the Willard No. 1?

A. I think so. It was within a half mile of a big blow-out in the Willows district, where they have a big crater.

Q. Don't you know that the Ohio Company quit-claimed those wells up there?

A. No, I don't know that.

Mr. Bourquin: That is all.

E. L. MOHR, Jr.

called as a witness on behalf of defendants; sworn.

The Clerk: State your name.

A. E. L. Mohr, Jr.

Direct Examination

By Mr. Scampini:

Q. Mr. Mohr, what is your business or occupation?

A. I am a service engineer for Baroid Sales Division of the National Lead Company.

Q. And what is the Baroid Sales Division of the National Lead Company?

(Testimony of E. L. Mohr, Jr.)

A. That is a service organization for the purpose of selling various types of materials for the drilling of oil wells, and the conditioning of drilling fluids.

Q. In connection with the material sold by this concern, do you handle materials also for the drilling of gas wells? A. Yes.

Q. How long have you been a service engineer for the Baroid Sales Division?

A. I started to work for Baroid Sales Division in August, 1941, and I have been in the service engineering part for three and a half years.

Q. What is your present position with that concern?

A. I am the district superintendent of the San Joaquin Valley.

Q. As such, in what fields have you worked, oil or gas?

A. Worked in all fields in the San Joaquin Valley.

Q. Name some of them.

A. Edison field, Coles Levee, Paloma field, Tenth Section field, Rio Vista field, the Willows gas field, Marysville gas, Chico gas field.

Q. Referring to the map on the board, which is Exhibit for Identification No. 11, please indicate on the map where the Willows gas field, the Marysville gas field, and the Rio Vista gas field are, for the benefit of the jury.

A. This is the Marysville gas field, right here (indicating), Sutter Buttes. This is the Willows

(Testimony of E. L. Mohr, Jr.)

gas field in here, and this is the Chico gas field on this side, and one well on the other side.

Q. Where is the Rio Vista field?

A. Rio Vista is right here (indicating).

Q. Did you have occasion to do some work on the well known as Faria No. 1, being drilled by the Cal Bay Corporation? A. Yes.

Q. Will you please point out on the map the location of that well in relation to Rio Vista?

A. This is the Rio Vista field, here. It is right in this area in here. Antioch, Pittsburg—this is the point here by Martinez.

Q. When did you first go to work for the Cal Bay Corporation? [380]

A. I was called from Coalinga to come to the Faria No. 1 for the Cal Bay Corporation on October 30th, and I arrived October 31, 1944.

Q. When you arrived there, what did you observe?

A. Well, they were having a great deal of trouble. They had the drill pipe pulled up into the casing, and they were circulating and trying to condition mud to go ahead and make hole. They were having shale, gas and salt water trouble.

Q. What were you hired for?

A. I was brought up solely to condition the mud to enable them to go ahead and make hole.

Q. What did you do for that purpose?

A. Well, the only thing we could do at that time was to raise the mud weight up to where the hydrostatic head could overcome the difficulties they had.

(Testimony of E. L. Mohr, Jr.)

Q. What do you mean by the hydrostatic head?

A. That is the pressure exerted by the column of mud against the formation.

Q. What weight of mud did you find when you first started to work?

A. When I arrived the weight of the mud was 77½ pounds per cubic foot.

Q. What did you do in respect to building up the weight of the mud?

A. We added baroid or barium sulphate to increase the density of the mud.

Q. To what weight did you increase it?

A. We went up systematically in order to find a spot by which we could maintain the formation pressures and to hold the shale back and still go ahead and drill without using too much weight material. [381]

Q. Did you keep notes or make any notes of the work that you did?

A. Yes, I have a regular service test report.

Q. Have you got that with him?

A. Yes, I have my copies of those reports here.

Q. Are they in your handwriting?

A. Yes.

Q. Will you please state how many days it took you to build up the mud weight from 71-odd pounds to 96 pounds, did you say?

A. Yes, 96 pounds was the first weight.

Q. Will you please state on what date you had built the weight up to 96 pounds, from your notes?

A. Can I go through my notes and find it?

(Testimony of E. L. Mohr, Jr.)

Q. Yes, you may.

A. On November 1st we had raised the mud weight up to 93½ pounds, and on November 3rd we had it at 99 pounds.

Q. When you reached a weight of 99 pounds what resulted?

A. Well, 99 pounds was sufficient to proceed to start to clean out the shale conditioned below, so they proceeded at 99 pounds. However, that was not sufficient.

Q. Then what did you do?

A. We raised the weight again.

Q. To what weight did you raise it?

A. We raised it to approximately 105 pounds at that time.

Q. When did that take place?

A. On November 6th the mud weight was 105 pounds.

Q. What causes the shale or the formations to come in in the course of drilling a well?

A. It can be a variety of reasons. [382] The formations can be a Frankfort shale zone, if the fluid loss of the mud is high, it can expand the shale particles involved to force them to take the way of least resistance, which courses into the hole. That would be one type of sloughing into the hole. Another type could be just a very finely ground shale which could be sloughed into the hole, but it all goes back to the fact that if the hydrostatic pressure of your mud is insufficient or you haven't some type of sealing, it will possibly run in on you.

(Testimony of E. L. Mohr, Jr.)

Q. Did you notice any gas or oil in the formations coming out of the well?

A. You mean in the cuttings?

Q. In the cuttings.

A. I did not examine the cuttings too closely. The only indication of gas I had was in the drilling mud, itself.

Q. Where would that be made apparent to you?

A. Do you mean in the drilling fluid?

Q. Yes.

A. Well, the gas and oil will fluff the mud up and make it appear as small minute bubbles in the drilling fluid.

Q. After reaching a weight of 105 pounds, did you leave the premises of the Cal Bay Company?

A. Yes, I was working several jobs in the territory at the time. I left and came back to Bakersfield.

Q. When did you come back to Bakersfield?

A. To Bakersfield?

Q. Yes. A. On November 3rd.

Q. When did you go back to the property of Cal Bay? [383]

A. Let's see. It was November 17th.

Q. When you got back to Cal Bay on November 17th what did you observe?

A. Well, they had to raise the mud weight up to 110, 112 pounds.

Q. Have you any opinion as to the reason why they had to raise the mud weight to 112 pounds?

A. Well, the shale condition was such that it required that weight of mud in order to conquer it.

(Testimony of E. L. Mohr, Jr.)

Q. What did you observe in respect to any gas coming from the well and being seen in the mud fluid coming out of the well?

A. Gas indications were very slight at the time, because of the fact that they were agitating the pits in order to aerate any gas that was entrained in the mud.

Q. At what depth were you drilling at that time?

A. On the 17th of November my report states that the depth was 4440 feet, which would indicate that they were cleaning out at the time. It was not the bottom hole depth.

Q. What was the bottom of the hole at that time?

A. I believe it was in the neighborhood of around 4840 feet.

Q. And you say that they were cleaning out a formation at approximately the 4400-foot level, is that right? A. That is right.

Q. Was that the formation at which trouble was being met in the course of controlling it?

A. Well, I can only assume that it was, because it was there. It would certainly not rise too far from the hole. It must have been opposite. [384]

Q. Were you able to clear up the trouble at the formation at the 4400-foot level? A. Yes.

Q. After that was cleared up, did they continue drilling, so far as you know? A. Yes.

Q. Did you remain there every day after that?

A. I was there on November 17th, 18th and 19th, and then I left for a few days.

Q. Where did you go?

(Testimony of E. L. Mohr, Jr.)

A. I was at Cal Bay on the 20th; then on the 22nd I remained in the immediate territory—in other words, I was in Rio Vista.

Q. Were you subject to call at the Cal Bay property?
A. Yes.

Q. On what day did you come back?

A. I came back on the 24th of November.

Q. Do your notes indicate the reasons why you came back on that date?

Mr. Bourquin: Just a minute. Is the reason pertinent? We object to that.

Mr. Scampini: I will withdraw the question.

Q. What did you observe when you came back on the 24th?

A. On the 24th they were drilling ahead at 4910 feet at the time I was there.

Q. What did you notice?

A. Well, the mud was in good shape. The weight was 114, 113 pounds. The viscosity was relatively high, and the salinity at the time was about 425 grains of sodium chloride per gallon.

Q. What is sodium chloride? Common salt?

A. Common salt, yes. [385]

Q. What is four hundred and how many grains, did you say?
A. 425.

Q. What is 425 grains of common salt in the formation indicative of in the course of drilling a well?

A. Salt water sand.

Q. Is that an unusually high salt content?

A. That is not as high as the salinities can go in this territory in the region of Rio Vista and this immediate area.

(Testimony of E. L. Mohr, Jr.)

Q. Were you able to get control of that salt sand by your processes?

A. The salinities of this mud was carried from the time that I had originally arrived at the well on October 31st, and we had succeeded in lowering that salinity by dilution from that point. The salt water sand evidently was in the immediate region of the window in the pipe.

Q. And by building up the mud were you able to get control over the salt water sand?

A. Yes, the salt water sand was controlled at a weight of around 99 pounds, considerably lower than the final weight of the mud.

Q. Describe what you observed and what you did after you arrived back on the well on November 24th.

A. On November 24th it was virtually just a routine check-up, to check the condition of the mud and see that it was in good shape, and to make any recommendations necessary to control.

Q. Did you find anything unusual about it?

A. Not at that time. The mud was in good shape.

Q. Was drilling progressing normally?

A. Yes, it was. [386]

Q. Then what did you do next, or what did you observe next, say, on the 25th?

A. Well, on the 25th I was notified that they had stuck the pipe. I think it was the 25th or 26th.

Q. Then what happened?

A. Well, I came over to the well on the 28th of November. It was impossible for me to come on the

(Testimony of E. L. Mohr, Jr.)

25th. I came to Faria No. 1 on the 28th of November, and they were stuck, and they had spotted a small amount of oil in order to free the pipe. However, circulation was excellent at the time. There wasn't any build-up of pump pressure or anything else indicating that the hole was caving, and so they had spotted oil in order to free the pipe.

I made a routine check at the time and found that the condition of the mud, as far as the preceding test was concerned, was comparable or even a little better.

Q. Then on the 29th what happened?

A. The well blew out on the 29th of November.

Q. Were you present at the time the well blew out?

A. When the well started to blow I was in Pittsburgh at the time having lunch. I had no way of knowing that it was blowing out, but I came back to the well during approximately the last half hour of the blow-out.

Q. What did you observe?

A. Well, it was a rather strong blow, and I took a check on the mud at the time, to see whether there was any salt water present in the gas blow, in order to prove in my own mind anyway or for anybody else's [387] information that it was a dry gas sand; in other words, if it had been a soft water connection with the gas sand, there would have been an increase in salinity.

Q. What did you find in respect to whether or not the gas was a dry gas or a wet gas?

(Testimony of E. L. Mohr, Jr.)

A. The salinities were lower than they were on the 24th of November.

Q. What does that mean to you?

A. Well, it indicated that there wasn't any water coming into the hole at all; in other words, the hydrostatic head, even with the well blowing out, was sufficient to control the upper salt water sand.

Q. To what weight was the mud built up before the well came under control?

A. To 116 pounds.

Q. What does that reflect in pounds of pressure at the bottom of the well?

A. I will have to figure that out. Do you mind? Do you mean the hydrostatic head?

Q. The hydrostatic head.

A. Very close to 4000 pounds hydrostatic head.

Q. For the benefit of us laymen what does that mean in the oil business?

A. Do you mean 4000 pounds hydrostatic head?

Q. Yes, at that depth.

A. Well, the mud is exerting a pressure of 4000 pounds per square inch against the formation walls at that point.

Q. How long did you remain on the property of Cal Bay after the blow-out?

A. Well, I was there all day of the 29th. In other words, until we had killed the well and brought it [388] under control.

Q. What do you mean by killing the well?

(Testimony of E. L. Mohr, Jr.)

A. Well, raising the weight to a point where the gas no longer blows—in other words, the well has subsided to a quiet point.

Q. After that was done, did you notice whether or not you still had circulation in that well?

A. Yes, we had complete circulation at all times during the blow-out.

Q. What is Baroid?

A. Baroid is varieties of barium sulphate. It is material of a very high specific gravity.

Q. You say you pour that into the mud?

A. Yes, it is strictly a weight material used to raise the weight of mud very quickly.

Mr. Scampini: At this time, may it please the court, I offer in evidence as our exhibit next in order photostatic copies that I have already delivered to counsel on the other side of the notes and memoranda made by Mr. Mohr in respect to his work on this well.

The Court: Is there any need of doing that? He has testified concerning them.

Mr. Scampini: There is no objection, counsel?

Mr. Bourquin: I do not want to crowd your Honor's efforts to expedite this matter, but in answer to the question we have no objection to those reports.

Mr. Scampini: You may take the witness now, Counsel.

(The reports in question were thereupon received in evidence [389] and marked Defendants' Exhibit 26.)

(Testimony of E. L. Mohr, Jr.)

Cross-Examination

By Mr. Bourquin:

Q. Mr. Mohr, you have been with the Baroid people how long, did you say? A. Since 1941.

Q. Their business is the supply and service of the product to the people engaged in drilling operations; that is correct, is it? A. That is right.

Q. You sell them the product, is that correct?

A. Yes.

Q. Do you charge them additionally for the service, or does that go along with the product?

A. That is free. The service is entirely free.

Q. In other words, the business of the company is the sale of its materials, among which was this chemical that you mentioned or weighted material—Baroid was one—those are sold, and just like the gasoline service station, they give a service along with it if it is asked for, is that it?

A. That is correct.

Q. No charge made for the service?

A. None at all.

Q. No charge made against the driller, the drilling company, for your time?

A. No, that is right.

Q. In that respect you are both salesman and service man?

A. Technically, yes. However, we do not go under the term of salesman.

Q. That is right. You are known as—what did you call it? A. Service engineer. [390]

(Testimony of E. L. Mohr, Jr.)

Q. What is your particular line of engineering? Anything other than this Baroid product?

A. Well, this mud work; mud engineering, as they call it, is a branch of petroleum engineering.

Q. Mud engineering is a branch of petroleum engineering? A. Yes.

Q. Are you a petroleum engineer?

A. No, I am not a graduate petroleum engineer.

Q. Had you had training before your work with the Baroid people in any engineering?

A. In civil engineering or any type of engineering?

Q. Yes, any time.

A. No, I took several mathematics courses in high school and junior college.

Q. But you did not go out and take an engineering course? A. No.

Q. So that you learned the business of Baroid, as I take it, while you were with the company, is that correct?

A. No, I had worked for several years before going to work for Baroid in the fields, themselves; so it was an accumulation of information over a period of several years, not necessarily while I was working for Baroid.

Q. You had worked around wells, drilling?

A. Yes.

Q. As a what? What do they call it?

A. As a roughneck, rotary helper is the formal title.

(Testimony of E. L. Mohr, Jr.)

Q. Mr. Mohr, when you go to a well to service, you test their [391] fluid, their mud, as it is called, do you? A. That is right.

Q. You have indicated you made several tests on your visits? A. Yes.

Q. You make your recommendations?

A. That is right.

Q. Do you do the physical work yourself, of carrying out the recommendations, or do you leave that to those engaged in the operation?

A. That is left to those engaged in the operation. I make the recommendations. I do not do the physical work connected with it.

Q. May I say this: You make your recommendation and leave it to them to carry it out?

A. Yes, and then I come back to check and see if it is carried out. You understand we have no way of forcing these people to carry out our recommendations.

Q. That is what I want to bring out; in other words, you do not assert any authority about that?

A. No.

Q. You have been in court here today. Were you here before today? A. No.

Q. You heard us talking here about blow-outs?

A. Yes.

Q. Have you witnessed any blow-outs before?

A. Yes.

Q. Many of them, or few of them?

A. Well, very few of them, because mud control is such now that you very seldom see blowouts, be-

(Testimony of E. L. Mohr, Jr.)

cause they are controlled to the point where they are an exception.

Q. In other words, so that that may be understood, it is the very purpose of the Baroid service and products to bring something [392] to the drilling fluid that will enable the drillers to avoid blow-outs, isn't it?

A. Well, that is the purpose of Baroid. However, it is not necessary to use that material in order to prevent blow-outs. It is knowledge of the territory that you are in which enables you to follow mud control to a point where you prevent any trouble of that sort.

Q. I suppose initially they used water for drilling fluid?

A. That is the basis of all aqueous drilling fluids.

Q. That is correct, isn't it? Initially they used water?

A. That is right.

Q. These mixtures or chemicals, such as your service company sells, are of more recent origin, aren't they?

A. Yes, it is a relatively new field in drilling.

Q. And they are designed to enable the drillers to avoid the blow-out, aren't they?

A. Well, when you drill a well you do not anticipate a blow-out. You have no way of telling. You are drilling right in the middle of any area in California, and if you do not know the territory it is possible to have a blow-out. The whole system of mud control is to anticipate them and to make hole without any mechanical trouble.

(Testimony of E. L. Mohr, Jr.)

Q. Your company publishes literature on the subject, doesn't it? A. Yes, frequently.

Q. Are you familiar with the literature of the company? I suppose you are.

A. Yes, I have read it.

Q. Have you with you any material from the pamphlet published [393] in May, 1941, by the Baroid Sales Division, termed "Drilling Mud?"

A. Do I have that particular article with me? Is that your question?

Q. Yes. A. No.

Q. Are you familiar with it?

A. Yes, I have read it.

Q. I suppose it was the basis of study with you in order to carry out the service of the company, wasn't it?

A. No, not necessarily. We are familiar with all those particular problems anyway.

Q. I am looking at the first page of it, reading from a passage appearing under "The Development, Functions and Use of Drilling Muds." Quotation No. 5:

"In the early days of rotary drillings blow-outs were extremely common."

A. That is right.

Q. "The invention of muds containing weighty materials is one of the most important single developments in the history of rotary drilling, as it enabled wells to be drilled in high-pressure areas with complete safety." That is right, isn't it?

A. That is right.

(Testimony of E. L. Mohr, Jr.)

Q. Safety from what?

A. Well, in a high-pressure area, safety would naturally mean high pressures.

Q. Safety for what? What are you trying to avoid?

A. In a high-pressure area?

Q. Yes.

A. You would be trying to avoid two things, either gas or salt water pressure. [394]

Q. Aren't you trying to avoid blow-outs?

A. Well, yes, naturally.

Q. Do you know the principal cause of blow-outs or for blow-outs?

A. What the principal cause is? Leading up to a blow-out?

Q. Producing one. That is my question.

A. Well, if the hydrostatic head of the column is not equal to or above the formation pressure, naturally you would expect a blow-out.

Q. Let us get to that slowly: Don't you know and doesn't your company disseminate the information that the principal cause for a blow-out is inadequate weighting and improper consistency of the mud?

A. That is not the basic cause of a blow-out. If the hydrostatic head of a column is insufficient to control the formation pressure, naturally the formation pressure is going to overbalance the hydrostatic head—in other words, it will blow out.

Q. What does the consistency of the mud have to do with a drilling operation?

(Testimony of E. L. Mohr, Jr.)

A. Consistency? Well, that will give you the body of your mud. In other words, you have to have a certain type of body to your mud to enable you to carry cuttings from the bottom of the hole to the surface, plus the fact that the consistency also involves the weight of your drilling fluid.

Q. Is that the only function of maintaining a proper consistency, to carry up the cuttings?

A. No, the whole system of [395] your rotary mud—it has a variety of functions, all combined into one basic mud—in other words, you lubricate your bit, you keep your tools cool, you transport your cuttings from the bottom of the hole to the surface, and you also have the sufficient weight to prevent any blow-outs.

Q. With respect to this weighting that you spoke of, how do you determine the weight of the column of mud? A. How do you determine it?

Q. Yes.

A. You weigh it on a regular balance; in other words, you have a scale.

Q. In these tests that you made of this well, did you weigh it, yourself? A. Yes, I did.

Q. Where did you weigh it out? At the pit, or did you weigh it coming out of the hole?

A. We weigh it usually at the flow pipe—in other words, coming out of the hole.

Q. Would that be coming out of the hole?

A. That is right.

Q. I want to look at this log one minute on that subject. [396]

(Testimony of E. L. Mohr, Jr.)

Mr. Bourquin: May I look at this log a moment? I will look at that, your Honor, when I have the opportunity, without taking the Court's time.

Q. Is the consistency of the mud introduced into the hole as mixture constantly changing?

A. Not necessarily. That is the whole function of drilling mud control, is to prevent consistency from rapidly changing.

Q. What happens to it when it encounters the clay in the formation?

A. Well, usually you can make mud if you have what they call high filter loss, the loss of the fluids in a formation; the loss of the fluids in a formation can cause the shale to go through the clay and become mixed in, thereby converting it into the drilling fluid.

Q. Let's go to that. What would happen to the consistency if the mud is lost by filtration into the formation?

A. In other words, your weight will rise as you lose the water which is the lightest of the ingredients. Your weight should come up.

Q. As you lose it, it would make your weight go up?

A. Yes.

Q. Because of the presence of water?

A. Because of the presence of what?

Q. You mean because of the presence of active materials in the mixture?

A. Yes. Your water is your lightest ingredient.

Q. If the water is lost into the walls you may expect the weight of the fluid at that place by the loss to go up? [397]

(Testimony of E. L. Mohr, Jr.)

A. It is not as immediate a change as that. It is a very slow change. They drill and then adding chemicals, and so forth, to the mud, you try to balance that loss of fluid in any formation. The consistency of your mud does not change so rapidly that you could go out and chop off a place and say, "116 here" and "110 over there."

Q. You say the water would—you say irrespective of the rate of loss the water would tend to increase weight? A. That is correct.

Q. What would the clay in the formation being drilled, what tendency or effect would that produce in the mud?

A. A loss of fluid in your formation.

Q. No. The clay in the formation being drilled, you are cutting a formation, you are picking out clay. What is the effect of that in your mud?

A. Partly it is good and it will depend upon the water. If you are drilling in a formation at a point where you are making considerable mud, why, the mixture of any clay or shale that you are drilling through, which you are mixing, is just as good or better, possibly a little better than the original mixture.

Q. You are saying in other words, if you are drilling in spots where it is picking up mud and shale that is going into your mixture?

A. Yes.

Q. But what effect on your mixture?

A. With no effect, usually. [398]

(Testimony of E. L. Mohr, Jr.)

Q. What effect with reference to viscosity?

A. Well, the increase of solids bring that up.

Q. What effect on the mud would be the inclusion of shale and clay from the formation being drilled?

A. What effect?

Q. What effect would that have on the viscosity?

A. That could be answered two ways. If you are previously weighting your mud very heavily with chemicals, in other words, disbursing agents, and had been carrying a considerable quantity of such chemicals in your mud and you went through a bentonite formation, a clay formation, the viscosity of your mud should go down, because you are adding fluid material with a mixture of some type that you are buying. In other words, you are adding fluid material to your mud so your viscosity should go down.

The Court: Can't we move along? Is the answer that the viscosity would go down?

The Witness: It may go down or up.

Mr. Bourquin: What is viscosity?

A. That is the fluid movement of your mud.

Q. Well, with more viscosity it is more gummy?

A. Yes, it is thicker.

Q. It would travel slower through the same opening?

A. Yes.

Q. What effect upon the mud would be the inclusion of gas from the formation?

A. The entry of gas into the drilling mud would cause it to flocculate, make it look like whipped [399] cream, the same idea is whipped cream: it has small bubbles which flocculate.

(Testimony of E. L. Mohr, Jr.)

Q. With what effect on the viscosity?

A. Then your viscosity will go up.

Q. What effect upon the inclusion of the mud will a stream of salt water have?

A. Salt water has a very definite effect upon it. In other words, it flocculates the clay particles, it makes them come together.

Q. It makes the clay particles stick together?

A. Yes.

Q. Will that thereafter mean loss of weighting material?

A. No, that does not necessarily mean that you are going to drop any material that you have in your mud. All mud is flocculent at all times, regardless of viscosity or any other characteristic that you have.

Q. Salt water is an electrolyte? A. Yes.

Q. Would that salt water tend to settle out the salt in the liquid?

A. Not unless you have a terrific amount of salt water.

Q. Not unless you had enough to do it? Let's look back a minute. You did say that incorporation of the clays and gases in there would tend to increase the viscosity and the flocculation of it.

A. Yes.

Q. In doing that it would expand the volume of the fluid?

A. That is a question that may be argued at great length.

Q. Well, tell us——(400]

(Testimony of E. L. Mohr, Jr.)

A. When that mud is in the hole, the bubbles are compressed to a point where the increase of volume in the hole is negligible, you never see it.

Q. Take a hole 5,000 feet? A. Yes.

Q. That is about where they were here when they had the blowout? A. Yes.

Q. How many atmospheres is there in that, how far down are you, how many multiplications would we be on atmospheric pressure at the surface in the bottom of that hole?

A. You don't have any multiplication of the atmospheric pressure, because you are below sea level.

Mr. Scampini: May it please the Court, I desire to object to any further examination along this line. It is getting us nowhere. It is not material to the issues of the case. It does not test the knowledge of the witness and it hasn't anything to do with the examination that I conducted of the witness. When we are delaying the trial, I think it will be conceded that this is a very extraordinary delay.

Mr. Bourquin: This witness testified that over a time of some few weeks he made successive visits and made tests of this mud on occasion he has said he found this mud in good condition. We want to test his knowledge.

The Court: I think it is a material aspect of the case, but the witness' answers are so long. Maybe we'd better take a recess. Please bear in mind the admonition of the [401] Court, ladies and gentlemen.

(Recess)

(Testimony of E. L. Mohr, Jr.)

Q. (By Mr. Bourquin): Mr. Mohr, just returning once to the subject of loss of water in fluids by infiltration, would that tend, with such loss, would that tend to make it more viscous? A. Yes.

Q. Naturally, if you drop it out it will become more viscous? A. Yes.

Q. On this subject of salt water, for a minute. You are familiar with the Baroid Sales publication of 1943, are you? A. With what articles?

Q. To the article of your Baroid Sales Division—

Mr. Scampini: I request that Counsel show the articles to the witness.

Mr. Bourquin: Mud-making materials. Let me ask you if under the heading, "Proper Use of Salt-Resistant Mud-Making Materials", your company does not disseminate this information on page 402:

"Salt or salt water tends to flocculate all ordinary drilling muds, with the result that the colloidal material is no longer colloidal and settles out of the fluid column around the bit?"

Q. Is that correct?

A. That would be correct if it had gone to an extreme point of flocculation.

Q. What does that mean, "settles out of the fluid column [402] around the bit"?

A. That is just—it is impossible to tell if the colloidal material which would be no longer colloidal material settles out around the bit. I know of no case in California where that has happened.

(Testimony of E. L. Mohr, Jr.)

Q. What does it mean, the fluid column settles out around the bit; does that mean the gathering of the weight material around the bit so they collect and form a bridge at the bit ? A. Yes.

Q. Also we have this same pamphlet, and if you desire to see it, I will hand it to you, on the question of accumulation of clay and the formation that you said the result would be to tend to increase viscosity and you said Chemicals are designed to treat that condition ? A. Yes.

Q. Does your company on that subject in its 1943 pamphlet disseminate this information at page 405:

“Most chemicals used to treat mud will reduce viscosity and gel strength to some extent at first, but the results are not always enduring. On the contrary, some of them actually thicken the mud after a short time and thus increase the danger of sticking the bit, gas cutting and blowout.”

Is that the view of your company on the subject and is that correct?

A. Well, yes, that would be correct, but that is a point that you continually try to overcome.

Q. That is something you are continually trying to avoid ? [403] A. Yes.

Q. And that would be that you establish your safety measure and your safety factors, do you?

A. Yes.

(Testimony of E. L. Mohr, Jr.)

Q. Let me return to the pamphlet that was published in May, 1941, that I referred to over there, and the first page thereof, again:

“The safety factor of the fluid column may be lost by encountering increased differential pressure in the formation, or by the fluid column becoming filled with gas bubbles, thereby decreasing the unit weight of the mud and consequently reducing the fluid head exerted by the mud column, initially only at the top of the column, but proceeding downward as mud leaves the hole by ‘geyser’ action.”

Is that the view of your company and is that correct? A. Yes, that would be correct.

Q. The safety factor is, 1, designed to avoid that, isn't it? A. Yes.

Q. And is one designed, 2, to avoid the trouble arising from the fluids becoming filled with gas bubbles and thereby decreasing the unit weight and producing a “geyser” action at the top of the hole, isn't it? A. Yes.

Q. What do you mean by “geyser action”?

A. A geyser action?

Q. Yes.

A. Well, when the mud travels by its own—when the mud will travel without—well, in other words like [404] it flows by itself.

Q. Did you ever see a geyser, not a blowout, but a natural geyser? A. Small one, yes.

(Testimony of E. L. Mohr, Jr.)

Q. You know how they operate, they will erupt like Old Faithful in one tall stream and settle down and after a few minutes it will take another shot and it will continue that during the time of the blowout?

Mr. Scampini: May I inquire if Counsel means to infer a geyser operation on the same principle as a gas well where the force is exerted by steam and not gas?

Mr. Bourquin: I am asking the witness.

The Court: You asked a question, whether the witness saw a geyser. Let's get on from there.

Mr. Bourquin: All right.

Q. Now, Mr. Mohr, will you take these mud reports that you made. I will hand them to you. Let me have them, please, Mr. Clerk. And will you also take this log of the well? While I ask you some questions explaining your report—your first report that you produced here was a report dated what day?

A. My first report was October 31, 1944.

Q. October 31. On that report you made a record of the mud weight, did you? A. Yes.

Q. The viscosity also? A. Yes.

Q. And you noted that the mud was salt mud 500 grains and you recommended an addition of water and to weight up and gun the [405] mud thoroughly— A. Correct.

Q. Will you look at the log? Let's go further. When was your next report? A. November 1.

(Testimony of E. L. Mohr, Jr.)

Q. November 1. I read certain of the contents of that already. What was next, November 3?

A. Yes.

Q. Then you found and recorded a high salinity?

A. Yes.

Q. What does that mean, high salt?

A. Yes, the salinity in the filtrate of the mud had increased.

Q. You recommended increase in weight, you recorded the hole was sluffing? A. Yes.

Q. That means the walls were breaking in in the hole?

A. Yes, the shale was running in.

Q. Was running in and was finding its way into the mud stream, is that correct? A. Yes.

Q. That is where you found the shale, was in the mud stream?

A. I found it up there. I could see where the shale was coming out. We were having trouble and trying to get the bit through down into the hole while they were cleaning out.

Q. You found the shale in the mud stream?

A. Yes, it was coming out.

Q. You could not see it anywhere else, could you? A. That's right. [406]

Q. You tested the mud weight then?

A. Yes.

Q. What did you find it to be?

A. 99 pounds on the 3rd of November.

Q. What was your recommendation with respect to weight? A. 105 pounds.

(Testimony of E. L. Mohr, Jr.)

Q. Will you examine that log for the days November 3rd and November 4th and tell us if the recommendations were carried out? You have two years there, Mr. Mohr. Get 1944.

A. Yes, I see that.

Q. I think you will find it further back. Have you got November 3rd?

Q. Please tell us what the log shows were the mud weights on the the three shifts on November 3rd when you recommended 105 pounds?

A. 97 pounds morning tour; 98 pounds on daylight, and 97 on afternoon tour.

Q. 97 in the morning, 98 at mid-day and back to 97 at night, is that right? A. That is right.

Q. Look at November 4th and see what they did with respect to that recommendation.

A. There is a notation here on daylight, "Heaving Baroid up to rigging and mixing same."

Q. How about the graveyard shift on November 4th? What does that show, the first shift?

A. It says, "Cleaning out."

Q. No mud weight? A. 96 pounds.

Q. Any mud weight recorded on the day shift on November 4th? A. None at all. [407]

Q. On the night of November 4th how close were they coming to your 105? A. 98 pounds.

Q. If you will just put your log there, I want to ask you about some of your further reports. Will you look at your report for November 17th? Have you that one? A. Yes.

(Testimony of E. L. Mohr, Jr.)

Q. On that report you make the recommendation as follows:

“When you gun the pit mud on one side has not been touched.”

Is that your entry?

A. Yes, that is right.

Q. In other words, you found that day that the mud on one side of the pit was not being touched, not being mixed, is that right?

A. No, that is not right because——

Q. What does it mean?

A. The pumps were set side by side on a very large suction pit. Where the mud flowed off the shaker into the suction pit was directly across from one pump that they were using to circulate with. Naturally, the mud won't make a circle around the edge of the pit. It will go straight across to the suction of the pump which is pumping the mud up. That entry means this mud on the other side was not moving into the pump.

Q. It was not moving?

A. That is right.

Q. It was standing quiescent in the pit, is that correct? A. Yes, more or less.

Q. This gunning that you talk about is merely a nozzle to shoot some of the same stream into that pit and keep it roiled [408] up, isn't that right?

A. Yes, that is right, agitated.

Q. If the mud is allowed to stand still what happens to it? A. Nothing.

Q. What?

(Testimony of E. L. Mohr, Jr.)

A. Nothing, not for a short period of time, no.

Q. What do you mean by a short period of time?

A. Well, if you let it sit for several weeks, then you would have a terrific picking, but on a short space of say eight or ten hours or two days there would be little effect on the mud.

Q. It would have very little effect on the mud?

A. That is right.

Q. What purpose does the movement of the mud serve?

A. In this case the movement of the mud was to aerate any gas they picked up while they were cleaning out, aerating it out on the surface of the hole in order to add a heavier weight column of mud going down without adding any further material.

Q. Look at your report on November 20th, in which you tell them there to be careful going through bridges; is that correct?

A. Yes, it says, "Be careful of going through all bridges."

Q. What bridges? A. What bridges?

Q. What are bridges?

A. That is when a small amount of shale lodges itself in the hole. In other words, the bit will take a small amount of material at that certain point where the hole is supposed to be clean.

Q. At that point the raising of the bit will encounter a washer, a bridge-like inside the hole, won't it?

A. No. [409]

Q. What is the bridge, then?

(Testimony of E. L. Mohr, Jr.)

A. A bridge is any obstruction that occurs in your hole when the hole has been drilled below a certain depth; then you have an obstruction in the hole probably from shale sloughing in. If slough fills in the hole it creates a bridge. It is a gap across a chasm.

Q. It spreads the interior of the whole?

The Court: You do not mean a gap across; you mean there is a substance that goes across?

A. That is correct.

The Court: That is what counsel asked you.

Q. (By Mr. Bourquin): Read the rest of that. Why did you tell him to be careful going through the bridges?

A. Because when you have a bridge you assume you have a shut-off from that point up, and if there is any gas or salt water below, then it will back up against that bridge. If the hydrostatic head is insufficient to hold the formation pressure below that bridge, then the gas or salt water or oil pressure, whatever you have, will tend to give you a light spot under any bridge.

Q. Read your recommendation as to that, as you made it at that time.

A. "Be careful going through all bridges as light gas cut mud and salt water will be below them." The loss of weights illustrate this very well.

Q. What was the viscosity test on that date?

A. 50 seconds A.P.I.

Q. That is the rate that that mud would flow through a given aperture, as you testified?

A. That is correct. [410]

(Testimony of E. L. Mohr, Jr.)

Q. What did you recommend on that date as to viscosity? More viscosity or less? A. Less.

Q. What did you recommend?

A. I recommended a viscosity near 35 seconds.

Q. They had what? A. 50.

Q. And you recommended that they put that right down to 35, did you? A. Yes.

Q. Will you take a look at the log on November 20th and let us see what they did about that recommendation? What viscosity did they have in the mud stream on November 20th on the three shifts on that day?

A. One viscosity on the morning tour was 43 seconds, daylight 50 seconds, and on the afternoon tour was 50 seconds.

Q. Turn to the 24th and let us see how close they come to your recommendation to put it down to 35. How about November 21st? What is the viscosity on the log there?

A. 55, 60 and 50.

Q. The first shift on that date there is no record of, at all? A. That is right.

Q. The day shift shows what?

A. 55 seconds.

Q. 55 even? A. Yes, and 60.

Q. 55 and 60. They raised your initial test on the day before, hadn't they?

A. The crews as a whole have nothing to do with—

Q. Please answer the question, Mr. Mohr. They had raised your test of the day before? [411]

(Testimony of E. L. Mohr, Jr.)

The Court: Well, of course, the answer is self-evident.

Mr. Bourquin: Yes, it is.

Q. What was the viscosity they had on the third shift on November 21st? A. 50 seconds.

Q. Turn to November 22nd and see if they paid any attention to viscosity at all. What entries are there?

A. Well, on morning tour evidently they were shut down waiting water—no steam—so they couldn't do anything at that time.

Q. How about the day shift?

A. Evidently they were shut down at that time, too.

Q. Not circulating? A. No.

Q. How about the third shift that day?

A. I would say that they were not doing much circulating at all on the afternoon shift.

Q. Any viscosity entry there?

A. Well, if there is no circulation there is no viscosity.

Q. Is there any?

A. There is no viscosity recorded here.

Q. No viscosity entered and no circulation entered? A. No.

Q. Please turn to the succeeding days of the 24th and the 25th and tell us what viscosity they maintained in that drilling fluid.

A. There is no viscosities marked on the log, at all.

(Testimony of E. L. Mohr, Jr.)

Q. On the 23rd?

A. Yes, they are, too. I beg your pardon.

Q. Will you please read them by tour, please?

A. Morning tour 60 seconds. [412]

Q. Mid-day how much? A. 84.

Q. 84, is that right? A. That is right.

Q. Night shift? A. 50 seconds.

Q. How about the 24th?

A. Morning tour was 65, daylight was 80.

Q. 80? A. Yes.

Q. Night shift? A. Was 75.

Q. How about the 25th?

A. The viscosity of 85 posted for morning tour, no viscosity on the day light because they had the well shut in, and on the afternoon tour 90 seconds.

Q. 90 seconds what?

A. 90 seconds viscosity.

Q. Is it a clear entry of 90 seconds, or 90 seconds plus?

A. 90 seconds plus on the night tour on the 25th.

Q. 90 seconds plus on the night tour of the 25th, and your recommendation had been 35.

Mr. Scampini: May it please your Honor, I think counsel is forgetting that there are recommendations in between the last one he has read and the present time.

Mr. Bourquin: I have not seen recommendations of viscosity. I will read another one now.

Mr. Scampini: November 24th.

(Testimony of E. L. Mohr, Jr.)

Q. (By Mr. Bourquin): Will you look at your mud report of November 24th and read us your recommendation for that day?

A. It says, "Viscosity is high. Chemicals have no effect because flocculation of clay is such that it cannot be dispersed now. Water alone is best for it, for it *recudes* [413] salt content and lowers percentage of clay salts. You can stand one and one-half feet of water in the pit now. Wet this up."

Q. In other words, on November 24th when you tested their mud stream or fluid you found the mud in such a condition that the chemicals had then lost all effect, didn't you?

A. Well, yes to that question, but chemicals had little effect on this entire system from the beginning.

Q. You found the viscosity high. How high did you find the viscosity in your test?

A. I showed it at 60 plus.

Q. Where did you test it at?

A. I tested it at the flow line.

Q. Your report is what date?

A. November 24th.

Q. That is the date the log entries show the operators there had recorded the viscosities of 65, 80 and 75, didn't it?

A. On the 25th or 24th?

Q. The 24th—65, 80 and 75?

A. That is correct.

Q. Returning to your report on that date, you then recommended to them that water alone would do it any good, didn't you?

A. That is right.

(Testimony of E. L. Mohr, Jr.)

Q. You are the man who sells chemicals?

A. No, we deal very little in chemicals.

Q. You are the people who sell the compounds—
Baroid?

A. Baroid, yes, but that is not a chemical.

Q. What else did you sell them?

A. That is all, just Baroid. [414]

Q. Only Baroid. You told them, then, that they
could stand a foot and a half of water in the pit?

A. That is right.

Q. You recommended the use of water. While
you are on the subject of that log and the subject
of mud weights, will you turn to the log for the date
the blow-out occurred, November 29th? Does the log
show the mud weight recorded by the operators on
the log that day? A. Yes.

Q. What mud weight?

A. It shows 110 pounds.

Q. Does it show whether that was weighed com-
ing out of the hole or weighed in the pit?

A. I would say coming out, because it says
“Pumped in pit of 113 pound mud.”

Q. Let me ask you if you can agree with me
as to this entry. This is the 29th.

Mr. Scampini: I think he has agreed with you
as to all entries so far, counsel.

Mr. Bourquin: Thank you.

Q. On the day shift, the second tour, as they
call it here, it records, “Well blew out at eleven
o’clock a.m. Pumped in pit of 113 pound mud.
Mix 75 sacks of clay.”

(Testimony of E. L. Mohr, Jr.)

Did you sell that? A. No.

Q. "320 sacks of Baroid." You sold that?

A. Yes.

Q. "Plus 11½ feet of water in the pit." Is that correct? A. That is correct.

Q. "Mud weight 110 pounds." Immediately above the notation, "Mud weight" are the words, "In pit," aren't they? [415]

A. It is on there, yes.

Q. The log indicates that their weight of 110 is the weight they found in the pit, doesn't it?

A. That is right. It probably comes from the fact that the gas-cut mud was going into the pit; consequently, the weight of the mud in the pit was cut to 110 pounds, too.

Q. The gas-cut mud would go into the pit; that is true? A. That is right.

Q. The gas coming out of the hole, the fluid would carry the gas into the pit?

A. That is right.

Q. The pit was at the same time the place and the only place where the mud was replenished and re-treated to overcome those deficiencies, wasn't it?

A. Yes.

Q. That is where you made the new mud, wasn't it, in the pit? A. Yes.

Q. Have you any report made between November 24th and November 29th?

A. No. There is a combination of reports on the 28th and 29th.

(Testimony of E. L. Mohr, Jr.)

Q. May I look at that just a moment? I will give it back. You made a report on the 29th on the forms of Baroid Sales dated November 28th-29th; that is correct, isn't it?

A. That is right.

Q. You record on that report a weight of mud 116 pounds. Which day would you tell us you weighed the mud at 116 pounds?

A. That was on the 29th when we killed the well. There is a [416] notation below that we killed the well with 116-pound mud.

Q. In other words, the only mud weight you had on that report was the mud that you made to kill the well?

A. That is right, after the mud was conditioned.

Q. From November 24th until after the blow-out you had no track of the mud weight, that is correct, isn't it?

A. That is right.

Q. Are those all the reports that you made to these people, Mr. Mohr?

A. That is right.

Q. Are those all the recommendations, those that are written into the form on the bottom of those reports that you made to them?

A. That is right.

Q. Did you give them any more detail at any time on the reports?

A. Not on the reports. The usual procedure is to write down a few simple recommendations on the log and then talk to the tool clerk and give him further details as to what you know, several ideas of what he can do to help himself.

(Testimony of E. L. Mohr, Jr.)

Q. When you say write on the log, do you mean the log here in evidence?

A. No, I don't mean on the log. I mean on my report. I do not write on the log. That is not my business at all. I never make an entry on the log.

Q. Did you give the Cal Bay people, or anyone there in connection with the operation, any other communications of your recommendations or tests other than the reports that you have here on the form sheets of the Baroid Company?

A. When I write [417] these reports and I check the muds, the tool pusher is usually in attendance at all times, and we discuss the condition of the mud, and what particular type of—

The Court: He wants to know if you wrote out anything.

The Witness: No, nothing except what is on these reports.

Mr. Bourquin: Those reports that you have before you in evidence? A. That is right.

Q. Didn't you make a written report to these people and recommendation on November 21st, telling them you wanted to get away for Thanksgiving? A. On the 21st?

Q. Yes.

A. Just a moment. I have no record of a report for the 21st in my book.

Q. Did you make them any written report or recommendation telling them that you wanted to get away for Thanksgiving and telling them what to do with that mud?

(Testimony of E. L. Mohr, Jr.)

A. I have no record of it here.

Q. Do you remember when Thanksgiving was that year, Mr. Mohr? A. 1944?

Q. Yes, if you have any independent recollection of your activity.

A. I would imagine around the 23rd of November.

Q. On the 21st didn't you give in writing your advice or your expression in a report you signed as an engineer for the Baroid Company, "Keep this damned thing out of trouble over Thanksgiving. I am going home for dinner?"

Mr. Scampini: If it please the court, a report has been [418] made in writing. The writing will speak for itself, and if counsel has such a report he should exhibit it to the witness.

Mr. Bourquin: I want you to produce it. I will ask you now to produce a report that this witness made to that effect on November 21, 1944, and delivered to those in charge over there.

Mr. Scampini: All I can say is I haven't the report. I haven't seen it. And if counsel has a photostat in his possession, or a copy, we shall be glad to look at it.

Mr. Bourquin: I have a photostat but I think it is only a copy of that report, your Honor, that I am talking about. I am not prepared to show that this is the report the man made. I want the witness' answer to the question.

The Court: The witness answered.

Mr. Bourquin: I missed it.

(Testimony of E. L. Mohr, Jr.)

The Court: He said, "Yes," I thought.

Mr. Scampini: It is my impression that the report in your possession is the report of the Naval officer you had stationed there.

The Court: Mr. Scampini, just a moment. I may be in error, but I thought the witness answered the question.

(Record read.)

Mr. Scampini: It is not proper impeachment, your Honor. The witness has not been shown the document yet. How can he be asked if he wrote the report? [419]

The Court: He has asked him if he wrote the document. You say you haven't got it. He is asking for secondary evidence. There is nothing improper about that.

Mr. Bourquin: Will you read the question, Mr. Sweeney?

(Question read.)

A. Well, I have no report of that type in my book, here.

The Court: He asked you whether you did it, or not.

A. Well, I may have. I will say that. If it is in my handwriting I will certainly——

Q. (By Mr. Bourquin): I am not prepared to show you a writing. I want to know if you made that.

A. I remember telling them I was going home for Thanksgiving.

(Testimony of E. L. Mohr, Jr.)

Q. In writing?

A. Well, I don't remember making a report for that day. I was there on the 20th, but I have no indication at all of a report on the 21st.

The Court: I think what counsel is asking you about is when you went away before Thanksgiving did you give a paper to the well driller in which you said, "Keep this thing in order. I am going home for dinner?" That is what he is asking you about. Did you give such a paper to the driller?

The Witness: Yes.

Q. (By Mr. Bourquin): Did you at that time, for whatever weight it may be entitled to, describe the thing as "the damned thing"—"Keep this damned thing out of trouble?" A. Yes.

Mr. Scampini: May it please the court, counsel has asked [420] the witness a question as to whether the document in writing was submitted by him. The answer is "Yes." If counsel now has a copy of that document I think we are entitled to use it as secondary evidence. I ask that it be produced and shown to counsel and the witness.

The Court: If counsel has it the court will order him to produce it. I take it he must have gotten information about it from some source. It may not have been from the document, itself.

Mr. Bourquin: I did not get it from the document, itself, your Honor. I only have here the memorandum of the observation of another individual from the document made at the time, as I understand it.

(Testimony of E. L. Mohr, Jr.)

The Court: Have you the document? [421]

Mr. Bourquin: No, I have not.

The Court: Counsel says he hasn't got it.

Mr. Scampini: I haven't got it. I never saw it.

The Court: The court rules the secondary evidence of its contents is proper.

Mr. Bourquin: The witness says he gave it to them. They ought to have it.

The Court: I will allow the answer to stand.

Q. (By Mr. Bourquin): Mr. Mohr, what is swab action?

A. Swab action? That constitutes—well, it works like an old-fashioned water pump. It pulls fluid with anything that you happen to be pulling. If the fluid rises with the object you are pulling, that is swabbing.

Q. Can there be such conditions in the hole that a pulling up of the drill pipe will induce a swabbing action at the bit?

A. Yes, it is possible.

Q. Would that occur when the solids in the fluid had settled out around the collar and the drilling bit?

A. If the solids had settled out, it could not very likely produce a swabbing action.

Q. This hole inside is just six inches in diameter; that is correct, isn't it? Six and a fraction of an inch.

A. I haven't any idea what the diameter of the hole was.

Q. You must have some recollection, or maybe you did not see the hole?

(Testimony of E. L. Mohr, Jr.)

A. No, the only thing I am concerned with is [422] the mud at the well.

Q. I think that will be apparent from the record. So we will understand what that swabbing action is, to illustrate, if the eraser of my pencil is the collar—and it has a collar-like aspect on the end of the drill pipe, hasn't it? A. Yes.

Q. Yes, you have seen them, and the bit fastened there in the collar, so that when the solids settle out—and they mean settle down when they say "settle out"— A. Yes.

Q. Settle out or down around that collar, in the space of that hole, as that pipe is pulled up, the solids around the collar will just draw up in that hole and produce the swabbing action below as it comes, just sucking in what is below it, won't it?

A. Yes, if that occurs, that will happen.

Q. And that would occur, as we said, if the solids had settled out, wouldn't it? A. Yes.

Q. Which they do if the mixture is not right, don't they? They tend to do that if the mixture is not right? A. Yes, it is possible.

Q. And which they do if anything introduced into the mixture tends to and actually does precipitate and settle out the solids; that is correct, isn't it? A. By that you mean water? [423]

Q. Water—I said salt, too?

A. Salt—that means you have several forms of salt. You can have rock salt or salt water. Salt water would tend to, if sufficient salt water was encountered, it would tend to promote settling of the solids.

(Testimony of E. L. Mohr, Jr.)

Q. I will have to go back to that 1943 pamphlet of your company's where it says salt or salt water tends to flocculate, etc., and settles out the fluid column around the bit. That is what we are talking about right now, isn't it?

A. Yes, but when you have five hundred grains salinity in your drilling fluid, you haven't a high enough salinity to flocculate your mud to the point where the solids will settle out.

Q. How much would you need?

A. Possibly a thousand.

Q. Possibly a thousand?

A. Two thousand.

Q. Salt would have these tendencies at 500 grains, but you think the amount was not sufficient to produce the action is that it?

A. That is right.

Q. That being one of the materials settling out. By the way, will it also settle out if the gel strength is off?

A. Your solids will sluff if your gel strength is low.

Q. Gel strength means the quality of a gelatinous character to hold things in suspense, like in molasses?

A. Yes, it is your suspension characteristic.

Q. If your gel strength is off, it will be settling out, won't [424] it? A. Yes.

Q. Assuming a swab action is taking place, when a swab action takes place and draws at the bottom

(Testimony of E. L. Mohr, Jr.)

of the well with the orifice of the drill pipe or packing off, if there is gas in the formation or if there is water in the formation, it is going to bring it there in the bottom of the well, won't it?

A. Yes, that is possible.

Q. It will pull it in?

A. Yes, if there is gas or salt water present.

Q. If there is gas there being drawn in at the bottom of a 5,000-foot hole, it will occupy the space of, we might say, if you drew up that pipe ninety feet, the gas would be sucked in to where you would have, with the pressure there at ninety feet, a volume of gas in the hole; is that correct?

A. Providing you had swabbed all of your mud out.

Q. There might be some margin of error. You might have something less than ninety feet at that atmosphere down there?

A. Yes. Just because you swab a hole does not mean you are creating a vacuum at the point below where you are swabbing.

Q. Supposing circulation is resumed and the fluid drops below that suspended drill bit at the bottom of the hole; does that force that gas back into the formation?

A. You are assuming that you have a vacuum at that point until you resume circulation?

Q. Not vacuum, swab action. We are talking in terms of that. [425] You have produced a swab action there and you have gas in the bottom of the hole below the bit. When you come up with your

(Testimony of E. L. Mohr, Jr.)

bit and the collar you are bringing your mud up with you, aren't you? A. Yes.

Q. Yes. You are not producing an absolute vacuum, but you are producing a space void of mud with some margin of error? A. Yes.

Q. When you resume circulation and the mud begins to flow out the end of that bit and drops to the bottom of the hole with the bit suspended, does that dropping mud force that gas back into the formation? A. Probably not.

Q. Of course not. What happens to that gas?

A. It is probably entrained in the mud.

Q. It is probably entrained in the mud. It is circulating. It begins to come up with the circulation? A. Yes.

Q. And perhaps with some elevation of its own because it is lighter than the fluid, isn't that true?

A. That is right.

Q. We are talking about what we have down there at 5,000 feet in a capsule, we will say, of 90 feet in that 6-inch hole. As that capsule is carried from the top, does it expand, does it displace more of the fluid than it did at the bottom?

A. Certainly it will.

Q. It will multiply its displacement of the fluid according to its approach to the top and the change in atmospheric pressure, won't it?

A. Yes, sir, you will have a certain [426] amount of expansion. However, you are assuming you are going to have a bubble of gas coming as free gas from the bottom of the hole to the surface, which, as far as I have ever seen, has never occurred.

(Testimony of E. L. Mohr, Jr.)

Q. Just let it be admixed in your mud which you have dropped in there any way you like with gas bubbles, gas and mud; it is coming up as you circulate, isn't it? A. That is right.

Q. Can you tell us now, it is true isn't it, that the volume of that, and therefore the fluid volume, the volume of fluid it will displace as it comes to the top, will multiply by the number of atmospheres between there and the top; that is correct isn't it?

A. I don't know of any way to calculate in actual round figures what the expansion would be. However, there is an expansion.

Q. Have you ever studied anything upon the subject? A. Upon the expansion of——

Q. Yes, on the change in the volume of gas from 5,000 feet up as it is brought up?

A. The volume of gas will vary inversely with the pressure applied.

Q. Exactly, and about how many times would you say it would be multiplied at 5,000 feet if you had a normal bottom-hole pressure, a normal bottom-hole pressure of about twenty-one hundred pounds?

A. Some gases will expand much more than others. [427]

Q. Let us take any gas. A gas at the bottom of a hole 5,000 feet deep with a normal bottom-hole pressure of 2,100 pounds: How many times will that expand rising to the top of that hole?

A. Taking a 90-foot cylinder, and you have, say, an eight and a half inch hole, you probably have

(Testimony of E. L. Mohr, Jr.)

about six and a half barrels. As that approaches the surface you could possibly have 50 barrels of gas.

Q. Won't it multiply 143 times the number of atmospheres in 5,000 feet in depth?

A. I don't know.

Q. You do not know the figures, and I am only asking you things that I read and asking you to confirm. I certainly do not profess my own. But we will all agree it will increase in volume as it comes up?

A. That is right.

Q. And as it increases in volume it will increase the displacement of the liquid, won't it? It will increase the volume of the liquid it displaces, the mud?

A. Yes, any gas cutting is——

Q. As that gets up to the point near the top where the pressure of that gas carried up is less than the hydrostatic pressure that remains there in the column above it, what will happen?

A. Repeat that, will you, please?

Q. When that gas gets up to the point that its pressure exceeds the hydrostatic pressure that remains there in the column above it, what will happen?

A. Your gas cutting will increase the volume and the fluffiness of your mud will [428] be increased considerably.

Q. Take your capsule coming up. Let us get it to within 500 feet of the top, and without getting into physics, let us assume its pressure exceeds the hydrostatic pressure at 500 feet of the mud column above it; what will happen?

(Testimony of E. L. Mohr, Jr.)

A. If you had pressure following it, it would probably blow.

Q. Won't its own pressure suffice?

A. Well, yes, it would, but in that case, I don't know, I don't think it could happen.

Q. You say it would probably blow. Do you mean blow out?

A. Yes, if you had the pressure behind it.

Q. Blow out the column above it. Now, when you have blown out five or six hundred feet of the column above it, what will the column below it and the gas at the bottom of the hole do then?

A. Well, if the hydrostatic head is not sufficient to maintain the formation pressure, then you are going to have further gas cutting.

Q. In other words, if you have first blown out enough of the column at the top to reduce the hydrostatic pressure, the weight of that column of mud to a point less than the gaseous pressure below, after the first capsule goes out, the mud will rise to the top and she will go out again, won't she?

A. Yes, that theoretically is possible.

Q. You will get this geyser action that your company writes up, won't you?

A. Geyser action refers only to the [429] spotting of the mud.

Q. I am not going to get into an argument about geysers now.

Your Honor, I think that concludes the cross-examination. May I ask my associate's advice on the subject?

(Testimony of E. L. Mohr, Jr.)

The Court: I do not know whether you need it or not, but you can ask him.

Mr. Bourquin: I have always found that it helps me.

The Court: I am a little skeptical about your statement that you only read on this subject.

Mr. Bourquin: That is all from the witness.

Mr. Scampini: May I ask a couple of questions, or shall we take a recess at this time?

The Court: Whatever you wish. Will it take very long?

Mr. Scampini: May we take a recess, your Honor?

The Court: We will recess, ladies and gentlemen, until tomorrow morning at ten o'clock. I will ask you please bear in mind it is your duty not to discuss this case among yourselves nor permit anyone else to talk to you about it or to form or express any opinion concerning the case until it is finally submitted to you. We will recess until tomorrow morning at ten o'clock.

(Thereupon an adjournment was taken until tomorrow, Wednesday, January 29, 1947, at 10 o'clock a. m.) [430]

(Testimony of E. L. Mohr, Jr.)

Wednesday, January 29, 1947, 10:00 A.M.

The Clerk: United States of America vs. Certain Land in Contra Costa County; on trial.

Mr. Bourquin: Ready, your Honor.

Mr. Scampini: Ready. Are you through, Mr. Bourquin, with Mr. Mohr?

Mr. Bourquin: Yes.

Mr. Scampini: Mr. Mohr, will you resume the stand?

E. L. MOHR, Jr.

recalled;

Redirect Examination

By Mr. Scampini:

Q. Mr. Mohr, at yesterday afternoon's session counsel on the other side asked you numerous questions bearing upon what may happen, as I understand the transcript, or what might have happened in the event that some swabbing action had been effected in this well at the time when the drill and the pipe were being lifted out of the hole and got stuck. I will ask you, Mr. Mohr, whether or not any swabbing action was present in this well between the period of November 27th up to the time of November 29th when the well blew out, to your knowledge? A. No, there was not any.

(Testimony of E. L. Mohr, Jr.)

Q. Upon what information that is available to you or observations made by you do you base your conclusion that no swabbing action was present in this case?

A. Well, for two reasons. [431] The first is in order to create a vacuum, as he illustrated by having a ball on the collar around the hole and create the vacuum by this plunger method he would have to have a complete seal in and around the drill pipe, but as long as the drill pipe is being maintained the drill collar down the hole would be—to which the fluid passes you can't create a vacuum because your fluid will go through. In other words, it will go through the drill pipe——

Q. Are you talking about circulation?

A. No.

Q. What is the effect of the circulation on the subject of the existence or non-existence of swabbing action?

A. In order to create a swabbing action, such as was illustrated there, you would have to have a complete seal around the bit or drill collar in whatever position the collar would happen to be, and if you have that situation, a situation such as that, you would have no circulation at all, and there was complete circulation at all times prior to and immediately after the blow-out.

Q. So we will all understand it, by circulation you mean when the process of the mud fluid being pumped into the drill pipe and down the drill pipe to the bottom of the hole, or wherever the bit is

(Testimony of E. L. Mohr, Jr.)

located, and then the bit has a couple of holes, or three holes in it—— A. Yes.

Q. And the mud fluid goes out through the bit by means of the holes? A. That's right.

Q. And it then comes outside the drill pipe?

A. That is correct. [432]

Q. And comes back to the surface by using the space between the drill pipe and the walls of the hole? A. Yes.

Q. If a ball had formed itself around the drill or place of drilling would there have been any space between the drill pipe and the side wall through which the mud fluid could come back to the surface?

A. No.

Q. The circulation then would have stopped?

A. That is correct.

Q. Do you know the nature of the formation through which the well was drilling just prior to the period when it started to come out of the hole?

A. Yes. They had been drilling in shale, and they had drilled into what the driller and the tool pusher termed a sand break.

Q. Had been drilling through shale——

Mr. Bourquin: I ask that be stricken as hearsay, what the driller and tool pusher told the witness.

Mr. Scampini: That is only what is called a—that is what they termed it.

The Court: I think the objection is good. You asked him if he knew what the formation was.

Mr. Scampini: Very well.

The Court: I will sustain the objection.

The Court: It is argumentative. I think that is (Testimony of E. L. Mohr, Jr.)

Q. (By Mr. Scampini): Do you know of your own knowledge what formation the drill had penetrated just prior to coming out of the hole?

A. Well, on that day they have an entry, "Sand." [433]

Q. Prior to reaching the sand formation do you know of your own knowledge through what kind of a formation the well had been drilling?

A. That is where the log shows shale formation.

Q. Does the log, as far as you know, indicate the penetration of any clay formation at any time prior to——

Mr. Bourquin: I will submit the log, itself, is the best evidence.

true. Sustained.

Q. (By Mr. Scampini): Did you examine the log, yourself? A. You mean what day?

Q. When you arrived and when you were treating the mud?

A. Yes. I examined the log usually for the depth of the hole at the time, and also any pertinent information that might be contained.

Q. What would be pertinent information to you?

A. Well, in the case of having trouble, as they were, I would be interested in knowing whether they were in sand or shale or any type of information that might be of interest to me as far as treating any mud condition they would.

(Testimony of E. L. Mohr, Jr.)

Q. As a result of your studies did you have occasion to treat your mud for the purpose of curing any clay formation encountered in the course of drilling the well? A. No.

Q. With respect to the mud that was treated by you, do you know whether or not the viscosity of the well was kept substantially [434] at the condition deemed requisite by you for the purpose of treating the condition encountered?

Mr. Bourquin: I object to that. The record is the best evidence.

Mr. Scampini: The record is not of the witness. It is not his record. He can state in his own way the result of his examination. The records are the records of someone, the drill pusher has put down what he thinks is the viscosity and that is not binding on this witness.

Mr. Bourquin: This gentleman has said he visited the well at intervals of two or three days, and at the time of his visits made a test. Between times the log shows what the viscosity was on the successive shifts. This question would allow the witness to assume something at variance with the log at intervals when he was not present at all.

The Court: I don't see how the witness can testify to anything except what he saw, or when he was there.

Mr. Scampini: That is what I am trying to bring out, your Honor, if you will permit the reframing of the question.

(Testimony of E. L. Mohr, Jr.)

Q. During all this period of time you were there between, let us say, the period of November 27th to 29th, how often did you make tests of the mud as to consistency, weight and viscosity?

Mr. Bourquin: I object to that. That has already been testified. It is not proper redirect examination. [435]

The Court: I think it has all been gone over by the witness, counsel, on direct examination. I don't know just what theory you are proceeding on. Do you want him to make some change in what he said?

Mr. Scampini: No, your Honor. The purpose of the question is to enter into the record the opinion of the witness as to whether that mud was in proper condition for the purpose of treating the formations and conditions encountered in the course of drilling the well during that period of time.

The Court: He has already stated, counsel, that he gave his advice and direction as to what to do, but that others performed the actual work.

Mr. Scampini: That is right.

The Court: You are asking him now to change that?

Mr. Scampini: No, your Honor. I am going to ask him whether he checked on the work done by others in the drilling of this——

The Court: You are going to show the entries in the log book are not correct, is that it?

Mr. Scampini: No, not necessarily. Those entries may be correct and still that mud would be in proper condition for the purpose; in other words,

(Testimony of E. L. Mohr, Jr.)

a difference of two or three degree, or whatever they call it, in viscosity, or five or ten degrees, might mean nothing at all in the course of operations in drilling a well or treating mud, as long as you [436] are in compliance with recommendations.

The Court: Isn't that argumentative, counsel? You can ask him his opinion as to the matter you just spoke of, but I don't see how it would be proper redirect examination to put it in the question you have just asked. I think the line of inquiry that you are seeking to pursue is whether or not the difference would be substantial to have any effect. That would be proper, a proper source of inquiry, but the way you asked the question, I think, is not proper redirect examination.

Mr. Scampini: We will follow your Honor's advice.

Q. You examined the log, Mr. Mohr, and you observed that the recommendations which you had made varied from the memoranda put down on this log, did you not? A. That is correct.

Q. Were those differences between the entries on the log, assuming, of course, that they reflected correctly the viscosity and consistency and weight of the mud, from your recommendations so substantial as to effect the character of the mud in respect to performing the objects which you had in mind when you made the recommendation?

A. No, they were not.

Mr. Scampini: That is all, your Honor.

(Testimony of E. L. Mohr, Jr.)

Recross-Examination

Mr. Bourquin: If the log is here I would like to see it a moment.

Q. Would you take the log, please, Mr. Mohr, and calling your attention to the entry on December 2, 1944, will you please [437] read the entry on that tour or tower, the second shift of that day?

A. "Working and circulating pipe add aqugell to mud."

Then the morning tour, shift, the daylight, "Working pipe and circulating. Knocked ball loose. Lost circulation."

Q. What is that "knocked ball loose?"

A. Yes.

Q. The entry is, "Working pipe"—Will you read it again?

A. "Working pipe and circulating. Knocked ball loose. Lost circulation."

Q. "Knocked ball loose." Do you know what experience would describe "knocked ball loose?"

A. Assuming there was a ball there that means they had sufficient movement in the pipe to where they could lower the pipe and shake a ball loose.

Q. You say "assuming there was a ball there." Are you doubting for a moment the record that they knocked the ball loose?

A. Well, I am assuming that from the information which came from the well later that the casing had collapsed, thereby causing the pipe to stick.

(Testimony of E. L. Mohr, Jr.)

Q. Are you accepting the fact they knocked the ball loose on December 2nd, or are you rejecting it?

A. I don't know. I was not there on December 2nd.

Q. What kind of a ball does that refer to?

A. Well, it can mean cuttings lodged around the bit.

Q. Does it mean that the materials are balled around the bit at the end of the drill pipe?

A. Ordinarily that would be [438] true if you have no circulation, but while you have circulation you are circulating the material away from the face of the bit at all times, and therefore you couldn't form a ball around the bit if you had circulation.

Q. So we must assume from what you say if it had a ball at the end of the bit they could not circulate.

A. That is true, if it were such to create a vacuum or anything such as was illustrated yesterday.

Q. Wait. A ball is around the bit. It would be just as if I take my hand to represent the collection or deposit of the materials, the cuttings, the clay that would settle around that bit, and they would adhere to it so as to create a ball on the end of the bit.

A. That seems to me——

Q. Please, just answer. Does that describe it?

A. Well, you have the description "on the end of the bit"; that is not true.

The Court: Then counsel has not described it correctly.

(Testimony of E. L. Mohr, Jr.)

The Witness: No, that is not correct.

Q. (By Mr. Bourquin): Let me, for the purpose of illustration, make on the blackboard, this will be very crude, a small drawing.

Mr. Scampini: Let's take the map. The blackboard is here, take that map.

Mr. Bourquin: Can you accept this as representing the end of the drill pipe and the bit (drawing figures on blackboard? [439] A. Yes.

Q. In other words, that is the pipe terminating in the bottom in kind of a collar that houses what I have said are like gears in there that turn to cut the formations. A. That is correct.

Q. Let's exaggerate that a little bit, so it will be plainer to the jury, let's take this figure, the larger one, as the end of the drill pipe. Let's put the collar on it, something like that. Is that about right?

A. Yes.

Q. Now, when we forget the record and forget this case, when we speak of a ball knocked loose, do we mean a collection of materials on that collar in the shape of a ball?

A. The ball will not go completely around.

Q. Would you step down?

A. That drawing is incorrect.

Q. You draw a ball on a bit. I want to assume a ball, don't argue the question, you are assuming a ball. Draw a ball on that bit.

Mr. Scampini: I suggest the hole be drawn on the blackboard also to indicate to the jury how it sizes up in reference to the hole, and where the bit, itself, joins it.

(Testimony of E. L. Mohr, Jr.)

The Witness: I will draw two vertical lines.

Mr. Bourquin: I want the witness to answer the question. If Mr. Scampini wants to carry it further, of course I respect his right to do it, although I think there is some confusion now under the question and the instruction.

Mr. Scampini: I am just trying to help out.

The Witness: That is the ball. [440]

Mr. Bourquin: Stand over so the jury can see. You have drawn these to represent the side of the hole?

A. Yes.

Q. Now, how big is that hole in this case?

A. I am not absolutely sure of the diameter of the hole. It was around $6\frac{3}{8}$ or $6\frac{1}{4}$ at that depth.

Q. Around $6\frac{3}{8}$ or $6\frac{1}{4}$ at that depth, inches?

A. Yes.

The Court: Just stand to the side of the board so the jurors can see.

Q. (By Mr. Bourquin): You have drawn in the part I will shade the end of the drill pipe in the hole.

A. Yes.

Q. When we come to this I wanted to draw horizontal lines. What is that; that is the bit and the collar, is it?

A. That is the bit.

Q. That is the bit. Does that show the collar, too?

A. The drill collar is above.

Q. The drill collar is above. In other words, the bit at the bottom spreads out, fans out from the bottom of the drill pipe?

A. Yes.

Q. What was the outside diameter of the drill pipe?

(Testimony of E. L. Mohr, Jr.)

A. I would have to look at the log. I think 3½-inch drill pipe.

Q. That is the outside diameter? A. Yes.

Q. Leaving then between 2½ inches or 2¾ inches between the drill pipe and the sides of the hole?

A. Correct.

Q. Or, in other words, an inch and a quarter or an inch and [441] three-eighths on each side of the pipe?

A. Approximately an inch and a half.

Q. Approximately an inch and a half, an inch and a half on each side. Now, then, this that you have drawn here that I will put in solid, you say that represents a ball on the bit, a ball on the bit, a kind of elliptical shape?

A. Well, it would probably come flush with the edge of the bit.

Q. It would probably come flush with the edge of the bit, something like that (indicating). When that forms that is formed from what?

A. Oh, it forms from wall cake or possible cuttings from the face of the depth.

Q. It could be formed from wall cake adhering to the drill pipe or could be formed from cuttings settling in there?

A. Yes, assuming the formations are subject to water.

Q. Assuming the water lost in the sides of the hole is in the formation and the water will extend in there? A. Yes.

Q. So this is the side, here? A. Yes.

(Testimony of E. L. Mohr, Jr.)

Q. And it is something which, depending on the conditions there, will occupy more or less of the space between the drill pipe and that hole and the side of the hole? A. That's right. [442]

Q. Now, you have heard it stressed here, or have you, by other witnesses for the defendants that when they undertook to circulate after the blowout they had a very limited circulation. Have you heard that stressed here?

A. Immediately after the blowout——

Q. No, I have asked you if you have heard that stressed here. A. Yes.

Q. I do not want you to tell me what happened there unless you were there.

Mr. Scampini: A little louder. I can't hear you.

The Witness: The answer is yes.

Q. (By Mr. Bourquin): Would that afford an indication that the ball which on the bit had so occupied the hole there that notwithstanding the pressure exerted at the top it did not leave enough free space in the hole to circulate the mud as it was propelled out of the drill pipe?

A. I do not think the presence of a ball would give circulation such as they had.

Q. Would the presence of the ball limit the circulation?

A. Yes, if a ball were present it would limit circulation to some extent.

Q. If that ball arose or formed to a sufficient extent in this inch and a half space on either side of the pipe it would in fact shut off the passage, wouldn't it?

(Testimony of E. L. Mohr, Jr.)

A. Yes, if the outside diameter of the ball was true as to the gauge [443] of the bit, then that ball could possibly shut off the circulation.

Q. And if the wall was heaving in, as was described here, heaving shale in, the formation heaving in would cooperate with the formation of the ball to obstruct the passage, wouldn't it?

A. Well, if the formation heaved in you have a greater space on either side of your ball, so technically if the formation heaves you have circulation through the space just emptied by the shale.

Q. You mean if you had a breakaway in the formation there like a cavity, that would add to the obstructing agency, but would leave a space around here, is that it? A. That is correct.

Q. I see. Would any of that action there tend to more readily admit, or would the action taking place on the withdrawal of the bit in that condition more readily admit gases from the formation down there into the space from which the drill pipe was withdrawn?

A. If they had pulled a bit which was swabbing, it would do that. However, they will not pull a bit that is swabbing, because they can take a bit when it is swabbing from the fluid——

Mr. Bourquin: I am going to move that that be stricken as argumentative and not responsive.

The Court: Yes. We will get along faster if you will just answer the question and not argue about it. All he [444] asked was a theoretical question as to what would happen.

(Testimony of E. L. Mohr, Jr.)

Mr. Scampini: Some of these questions are argumentative, I respectfully submit.

The Court: No, I think the question can be answered. The witness goes on to tell what they would do. The latter part of the answer may go out.

Mr. Bourquin: May we have the question and answer read?

The Court: Yes, read the question and answer.

(Question and answer read.)

The Court: The part after the word "however" may go out.

Mr. Scampini: I move that the whole answer be stricken out and the witness be reasked the question, because the latter part is an explanation.

The Court: In order to clarify the matter, suppose you ask the question again. Strike out the question and answer.

Mr. Bourquin: Shall I ask it again or may I have the reporter read it?

The Court: The reporter may read the question again.

(Question re-read.)

The Witness: Yes.

Q. (By Mr. Bourquin): To draw another illustration here, say this is the bottom of the hole, the very bottom down here at "X"—can you see that, Mr. Mohr? A. Yes.

Q. In withdrawing a drill pipe from the bottom of that hole with a ball on it, what would be the effect so far as the [445] fluid, the mud at the bottom of the hole is concerned?

A. It would be lifted.

(Testimony of E. L. Mohr, Jr.)

Q. It would be lifted. In other words, as we drew up this ball we would carry up all or a large part of the mud fluid in the bottom of that hole, is that correct? A. That is correct.

Q. So that when we got it up to a point we would have a space below the bit without mud, is that correct?

A. No, for the reason that the drill pipe is full of mud when you are making a trip. The mud is equalized in the drill pipe and in the annular space, too, so the mud will flow from the bottom of the drill pipe—a certain portion of it will flow into the evacuated space.

Q. How big are those openings in the bottom of the drill pipe that the mud can flow through?

A. They vary. Three-quarters of an inch.

Q. You say if we pulled that pipe up it would tend to lift the mud? A. Yes.

Q. Wouldn't it create a void down there, to, let us say, an undetermined extent in the fluid at the bottom of the hole?

A. Well, in order to create a void you have to have a complete seal, which we do not have as long as we have holes——

Q. I mean a void of mud. Let us forget the vacuum.

A. No, it won't be a void because there will be a certain percentage of mud flow into it. [446]

Mr. Scampini: A little louder. I can't hear you, if I may say so.

(Testimony of E. L. Mohr, Jr.)

Q. (By Mr. Bourquin): If I took an ordinary plumber's tool that we know as a plunger, that is, the rubber on the bottom—we have it in the house; the plumber will use it to break up a stoppage—and I draw that up from the bottom of a hole that is no larger around than this hole is around the drill pipe and ball, and that hole is full of mud, as I get it up, do you mean to say that that mud is going to replace what I have drawn up just as fast as I draw it up?

A. If you have a volume of mud inside—your mud is equalized inside your drill pipe and on the outside, so it will not replace entirely.

Q. It won't replace entirely, and as we said yesterday—and let me say this again—we do not need a vacuum in the strict sense down there to admit gas in that hole, do we?

A. No, if the pressure is sufficient.

Q. You heard it said here that they were down there in the high pressure, weren't they?

A. Yes.

Q. So that no vacuum is needed; all it needs is room in that hole for that pressure to rush that gas into it; isn't that all that is needed?

A. That is correct.

Q. And as we said yesterday, when we admit gases into the hole replacing the mud, they displace the mud as they rise and also as the mud is circulated, don't they? A. Yes. [447]

Q. And they displace it to an extraordinary extent when those gases reach the top of a 5,000 foot hole, don't they?

(Testimony of E. L. Mohr, Jr.)

Mr. Scampini: I now respectfully submit that that is purely conducting an argument and a debate with the witness.

The Court: I think you covered that ground yesterday, Mr. Bourquin.

Mr. Bourquin: Yes, but I have wondered if you have determined overnight that where you said yesterday the space displaced yesterday would multiply twenty or thirty per cent, that it would actually multiply 143 times from the bottom of a 5,000 foot hole.

The Witness: I did not make that statement, that it would multiply 143 times from the bottom of a 5,000 foot hole.

Mr. Bourquin: I said so. Have you examined the question since yesterday?

A. It is a known fact that gases will expand upon the release of pressure.

Q. And to what extent will the gas from a 5,000 foot pit expand in its rise to the surface? How many times? A. I have no idea.

Q. There are ways, in addition to swab action, that gas will displace the mud fluid in the hole, aren't there? A. Yes.

Q. You heard it testified here, too, that this fluid was showing gas for days before this blowout?

A. Well, the testimony yesterday—there wasn't too much of that included [448] in my hearing yesterday.

Mr. Scampini: I didn't hear you, Mr. Mohr.

The Court: I think he testified yesterday he was only here yesterday.

(Testimony of E. L. Mohr, Jr.)

The Witness: Yesterday was my first day here.

Q. (By Mr. Bourquin): Yes, but in a fluid that is being gas cut, showing gaseous pressures at the bottom, you are getting a displacement all the time, aren't you?

A. Well, it is not actually a displacement. That is what they call gas cutting or entraining gas into the mud, which is aerated out at the surface.

Q. And if that fluid that that gas is cutting—it means it is entering, rising in it, doesn't it?

A. Well, it will rise with the flow of the mud, yes.

Q. And it will rise faster than the flow of the mud rate, won't it?

A. Well, it is a very small increase in the velocity of the mud, if any.

Q. In other words, you mean it has a tendency where it has cut to kind of retain its place in the stream?

A. Well, it will until the hydrostatic head is released to the point where the expansion can begin to take place.

Q. And it will retain its place and its expansion, then, if it retains its place, will only vary as it is raised by circulation in the stream?

A. That is correct.

Q. In a highly viscous fluid the gases will not—what did [449] you call it—they will tend to recirculate down the drill pipe, won't they?

A. They will if the mud is not aerated at the surface.

(Testimony of E. L. Mohr, Jr.)

Q. What do you mean by aerate?

A. That was the reason for the mixing.

Q. Mixing—in other words, the mixing is to take that gas out, isn't it?

A. Yes, sir, to stir it.

Q. To the extent that they get it out it is out, and to the extent it is not got out, it goes back down the drill pipe, doesn't it?

A. Yes, anything that is entrained and does not leave naturally.

Q. Just like you have seen in marshes when we were kids; you have seen gas bubbles come to the top of the mud, and they were so tightly held in a viscous fluid that they would not explode; you would have to break them?

Mr. Scampini: If the Court please, is this proper cross-examination? I respectfully submit it is an argument and debate. It is making an argument to the Jury. It is not conducting an examination of the witness within the scope of the redirect examination.

The Court: I think it is proper cross-examination of an expert. It may be you are covering some of the same ground you covered yesterday.

Mr. Bourquin: I think I am, your Honor. That is usually the vice of redirect and recross. Redirect is calculated to [450] pick up the witness on redirect examination and the recross is attempting to keep him in the same place.

Q. Mr. Mohr, a highly viscous fluid will also tend to carry around the circle and into the drill

(Testimony of E. L. Mohr, Jr.)

pipe again the cuttings and the clay that are carried up, won't it?

A. No, that is not true.

Mr. Scampini: I submit, that has been asked and answered three or four times, your Honor.

The Witness: That is not true.

Q. (By Mr. Bourquin): Aren't the cuttings and the materials in a highly viscous fluid tightly held?

A. Yes, they are raised to the surface. However, at the surface of the hole you have what you call a shale shaker, which eliminates through vibration all cuttings coming from the hole.

Q. All cuttings?

A. Except extremely small particles which have entered into the mud probably as inert material.

Q. On this question of viscosity, sir, do you mean to testify that where you have recommended that the viscosity be kept not higher than 35, that a viscosity of 90 plus is serving the same purpose?

A. That question of viscosity is extremely elastic. The recommendation of 35 seconds merely was to——

Mr. Bourquin: We will ask the witness to answer directly, your Honor. If he wants to explain, he can. I am asking him if he wants to state that a 90 plus is meeting a requirement [451] of not higher than 35.

The Court: Yes. Answer yes or no.

Mr. Scampini: The question started off by saying, "Do you mean to testify," which immediately begs a debate with the witness.

(Testimony of E. L. Mohr, Jr.)

The Court: I will overrule the objection. Answer yes or no, and then explain your answer.

The Witness: Yes, but the question of viscosity is such an elastic one that your fluctuation between 35 seconds and 90 seconds does not necessarily mean you are jeopardizing in any way the formations or the hole in which you are drilling.

Q. Why then, in your tests and reports do you continually admonish them to reduce that viscosity to 35?

A. That was to make it easier to eliminate the gas. The lower the viscosity the easier the gas is released.

Q. The easier the gas is released in the ditch?

A. Yes.

Q. So it is not returned in this vicious circle?

A. That is right.

Q. The fine materials are released in the ditch, is that true?

A. The fine materials are taken out by mechanical means.

Q. When a fluid tests 90 plus, what does the plus mean?

A. That 90 plus is a new one on me. That means it is 90 seconds and probably 90.2. It is very likely a fraction of a second over 90. [452]

Q. Doesn't it mean, too, 90 is as high as they are able to test it and still the flow is not complete?

A. Oh, no, 90 is extremely—there are extremely higher viscosities than 90.

Q. There are extremely higher viscosities than 90?

A. Yes.

(Testimony of E. L. Mohr, Jr.)

Q. You can raise viscosity until you would have a complete plastic, couldn't you?

A. That is true.

Q. Would that be a desirable drilling fluid?

A. No, an aqueous solution, no.

Q. What do you mean by an aqueous solution?

A. An aqueous solution mixed with water.

Q. With this mud solution mixed with water?

A. Yes.

Q. When you admonished these people on November 24 and 25, that water alone is the only thing that would correct their mud, what did you have in mind?

Mr. Scampini: I object to the use of the words "When you admonished these people," your Honor, as a conclusion and argumentative. It is a recommendation, not an admonition.

Mr. Bourquin: I will substitute the word "recommended."

The Witness: The use of water would naturally lower the viscosity by reduction of percentage of solids in the mud.

Q. It had become so viscous and so jellied, chemicals had lost all effect on it, isn't that so?

A. No, the chemical treatment was not—it was due more or less to the salinity of the mud, not in effect it had become so viscous that it [453] could not be treated.

Q. What did you mean when you said that chemicals had lost all effect on this fluid?

Mr. Scampini: I submit that that question has

(Testimony of E. L. Mohr, Jr.)

been asked and answered and gone into yesterday, your Honor; not proper recross-examination.

The Court: I will overrule the objection. You asked him whether or not this test of viscosity meant anything on redirect. He is entitled to pursue that. Overruled.

The Witness: Could I have that question again?

(Question read.)

A. Well, in the presence of salt in a clay base drilling mud, the effect of ordinary chemical thinners do not tend to reduce viscosity as rapidly as they do in mud that is not contaminated with salt.

Q. Did you say yesterday you did not sell anything but baroid?

A. When I was on the job that is all we had used.

Q. Do the baroid people sell anything else to be used in these muds besides the baroid, the weighting material?

A. Oh, yes.

Q. What else?

A. They have a very long list of materials. They have Aquagel.

Q. Was that used in this fluid?

A. So far as I know, no.

Q. What else? A. They have Impremex.

Q. Was that used? A. No, it was not.

Q. What else do they sell?

A. They sell Stabilite.

Q. Was that used? A. Not in this well.

Q. Anything else?

(Testimony of E. L. Mohr, Jr.)

A. Baroid is the only thing that we have that was used.

Q. When you have a high viscous fluid, won't the addition of the baroid itself tend to increase the viscosity?

A. Your Honor, that can be answered two ways. The presence of baroid in drilling mud tends to increase the hydrostatic head of your mud on your funnel, thereby giving you a lower viscosity count than on a straight ordinary drilling mud without weight. On the other hand, if you are adding the baroid sometimes it is necessary to water the mud so it remains stable as far as viscosity is concerned. It should not go up, but should go down.

Q. What happens in that event?

A. The viscosity goes down?

Q. I say, what happens in the latter event with the viscosity?

A. If you watered mud and added baroid to it, then the viscosity would be lower.

Q. And in the other phase of the matter it will be higher?

A. Not necessarily. You can increase the hydrostatic head of your mud on the Marsh funnel and drive your mud out faster through the aperture than you did before, so your viscosity is lower in seconds.

Q. What would be the effect of introducing crude oil into the [455] mud fluid?

Mr. Scampini: If it please the Court, I respectfully submit that that is not proper recross-examina-

(Testimony of E. L. Mohr, Jr.)

tion. I never asked any questions as to the subject matter of crude oil bearing upon it.

The Court: I will overrule the objection.

Q. (By Mr. Bourquin): The answer, Mr. Mohr, please?

The Witness: That is a very difficult thing to say, what will happen upon adding crude oil to mud, because under certain conditions it can cut the mud, fluff it up a little bit, such as gas cutting, or in the cases where you have extreme hardness present it can convert partially into a soap.

Q. Will the oil displace the fluid?

A. Certainly, if you add a certain volume it will displace an equal volume.

Q. How many gallons are there in a barrel of oil? A. 42.

Q. What?

A. 42, that is, an oil-field barrel.

Q. Or about one thousand gallons in 25 barrels, is that true? A. Yes.

Q. Do you know how many gallons of fluid were in that annulus, that is, in the hole outside the drill pipe at 5,000 feet? A. It can be calculated.

Q. Tell us about what it was.

A. I would say approximately two hundred barrels in the annulus.

Q. Approximately two hundred barrels or how many gallons? [456] A. Eight thousand.

Q. In other words, the introduction of 25 barrels of oil would represent about twelve per cent of the volume of the fluid in the hole?

A. That is right.

Mr. Bourquin: That is all, sir.

Mr. Scampini: No further questions, your Honor.

The Court: That is all.

Mr. Scampini: I am going to start with Mr. Norris's examination, which will take quite some time.

The Court: We will take the morning recess at this time, ladies and gentlemen. Please bear in mind the admonition of the Court.

(Recess.) [457]

Mr. Scampini: I will call Mr. Byron Norris.

BYRON B. NORRIS,

called as a witness on behalf of Defendants; sworn.

The Clerk: Will you state your name?

A. Byron B. Norris.

Direct Examination

By Mr. Scampini:

Q. Mr. Norris, what is your profession?

A. I am a consulting engineer and geologist.

Q. How long have you been engaged in that profession?

A. Since 1935.

Q. What school did you attend for the purpose of studying that profession?

A. Iowa State College.

Q. When did you graduate?

A. 1921.

Q. With what degree?

(Testimony of Byron B. Norris.)

A. Degree of Bachelor of Science in mining engineering.

Q. After leaving the Iowa State College what did you do?

A. During 1921 to 1923 I was engaged in mining work in Idaho and California.

Q. From 1923 and thereafter what did you do?

A. 1923 I went to work for the oil fields, in the oil fields, first as a roustabout and then as a rough-neck, then as a derrick man.

Q. How long did you work in the oil fields?

A. Until 1926.

Q. After 1926 what did you do?

A. I took a place with the State of California as an inspector in the Division of Oil and [458] Gas.

Q. How long were you in that position?

A. As an inspector I would say about two years. Then I was promoted to engineer.

Q. How long did you remain as engineer for the California Division of Oil and Gas?

A. Until 1935.

Q. What was the scope of your duties as inspector or engineer?

A. Well, I made tests on wells and reported on work, and had engineering supervision of the fields assigned to me.

Q. What fields were assigned to you?

A. Well, I was located in the Los Angeles, Long Beach and Taft offices in that period.

Q. Where is Taft located in California?

A. Taft is on the west side of the San Joaquin Valley, Kern County.

(Testimony of Byron B. Norris.)

Q. How long did you remain in the position of engineer with the Division of Oil and Gas?

A. From 1935—no, 1931.

Q. In 1931 what did you do?

A. There was an opening in another state office, the Division of Corporations, and I became the engineer in the State Division of Corporations at the Los Angeles office.

Q. Engineer of what?

A. Well, the work there consisted of examining all applications for permits to sell securities that require technical analysis. Most of these applications I ran out were for mining and oil companies.

Q. What was the scope of your duties or activities as such engineer for the Division of Corporations?

A. Well, I was given the duty to render reports, and to investigate the [459] various fields and specialize with reference to these applications.

Q. You say you remained there until 1935?

A. Yes.

Q. What did you do after 1935?

A. In 1935 I opened my own office as a consultant.

Q. Consultant of what?

A. Consulting engineer specializing in mining, petroleum and water supply.

Q. Where did you open your office?

A. In the Van Nuys Building, Los Angeles.

Q. Have you been engaged in that activity ever since?

(Testimony of Byron B. Norris.)

A. Not entirely. During a portion of 1942 and 1943 I gave up my office and went to work full time for the Army.

Q. In what capacity?

A. As an inspector of the technical work in the petroleum section, plant protection.

Q. What branch of the Army was that for?

A. The first part was under the air service, and then I was transferred to the Ninth Service Command.

Q. What was the scope of your activities in that work?

A. We were inspecting oil installations. That is, the Army was doing it with the idea of protecting them from possible bombing attacks. In other words, we were getting ready for a possible invasion.

Q. How long were you with the Army in that capacity? A. A little over eight months.

Q. Then what did you do?

A. I resumed my practice as consulting [460] engineer.

Q. As consulting engineer in the private practice of that profession for what companies have you done work in the last five or six years?

A. Well, Gibson Oil Company, McCope Oil Company, lately the Quinn Oil Company, and Caberra Oil Company, and for various corporations.

Q. What kind of work do you do in respect to oil companies?

A. I make reports after examination and geological service, and also give technical supervision to drilling operations.

(Testimony of Byron B. Norris.)

Q. Do the drilling operations concerning which you give technical supervision include wells being drilled for oil? A. Yes.

Q. And wells being drilled for natural gas?

A. Yes.

Q. Do you know Mr. Joseph Faria?

A. Yes.

Q. When did you first become acquainted with Joseph Faria? A. March 31, 1942.

Q. Under what circumstances did you become acquainted with him?

The Court: Counsel, I don't wish to interrupt the examination, but I have had—I hope counsel won't mind if I interrupt in an endeavor to shorten the examination of the various experts on both sides of the case, we have had many of these cases here. I think when counsel are qualifying an expert they can save a great deal of time by asking him for his opinion and then ask him the reasons upon which he bases the opinion, and that saves a great deal of time on your examination.

Mr. Scampini: May it please the Court, I am not using Mr. [461] Norris as a valuation expert. He did the geology on this structure and supervised the drilling of the well.

The Court: Oh, I am sorry. I thought he was an expert as to value.

Mr. Scampini: I appreciate your Honor's point, and I will follow that suggestion when we reach that situation.

(Testimony of Byron B. Norris.)

Q. Under what circumstances did you first become acquainted with Mr. Faria?

A. A party by the name of A. W. Bass came to my office——

The Court: Counsel, why go into all that? Did this witness actually make an investigation of this property and then supervise the drilling?

Mr. Scampini: Yes.

The Court: Then ask him.

Q. (By Mr. Scampini): In the course of your practice did you have occasion to make a geological report with respect to certain properties owned by Cal Bay Corporation at or about the vicinity of Pittsburg? A. Yes.

Q. When did you first make the investigation?

A. Well, the investigation started on March 31, 1942.

Q. What was the first thing you did that day?

A. The first thing I did was to go over these properties with Mr. Faria with the idea to see if they wanted a report.

Q. After you had made your preliminary report what conclusion did you reach, preliminary check?

A. It was my opinion that [462] the formations that were capable of producing oil were present and also that there was an anticlinal structure present.

Q. After you reached that conclusion what did you do?

A. I continued my field work with the idea of completing that report.

Q. What did your field work consist of?

(Testimony of Byron B. Norris.)

A. Well, it was a geological survey of the area mainly from Kirker Pass down to Concord.

Q. Mr. Norris, you are familiar, are you not, with the map which is on the board? A. Yes.

Q. Marked as Defendants' Exhibit 11 for Identification. Are you familiar with that map?

A. Yes.

Q. What is that map?

A. That is Mr. Blandsford's map, James C. Blandsford Map of the Oil Fields of California.

Q. What are the green spots on that map, what do they indicate? A. Oil fields.

Q. What do the red spots indicate?

A. Gas fields.

Q. Will you please point out on the map with this marker or stick the location of the properties of Cal Bay Corporation investigated by you?

A. The area right here colored in orange.

Q. In the immediate vicinity of that area what fields were producing at the time that you first made your investigation?

A. At the time I made this investigation the Rio Vista, McDonald Island, and Tracy fields were producing. [463]

Q. Were any drilling operations going on at the time at field known as Honkers Bay, immediately across the river from Cal Bay Corporation properties?

A. I don't believe when I originally made the investigation they were, but they did shortly after.

(Testimony of Byron B. Norris.)

Q. Were there any drilling activities going on immediately across the river at a location known as Suisun Bay at that time?

A. There were either at that time or shortly after.

Q. Will you now point out the vicinity known as Suisun Bay? A. Right here.

Q. Where is Honkers Bay? A. Here.

Q. In your preliminary studies did you have occasion to study the geology of the producing fields in the vicinity of the Cal Bay property?

A. Yes.

Q. What source did you go to for the purpose of studying your geology?

A. Well, at the time most of the fields in that area had not been written up, but my main source was the Geological Map of the State of California, and Geology of California, by Reid, which mentioned this area.

Q. After making that preliminary study did you make an investigation as to the rocks or formations, that is the structure of the Cal Bay property?

A. Yes.

Q. What did you do and accomplish?

A. Well, I covered the area in the usual way of a geological survey, I observed outcrops—— [464]

Mr. Bourquin: What the witness is saying would smack more of cross-examination. I would object. We will consume a great deal of time asking him everything he did. I will object to it.

Mr. Scampini: It is preliminary: I am going to ask as to what he found on——

(Testimony of Byron B. Norris.)

The Court: I think the most important thing is what was his opinion as to the nature of this area. You have already qualified him as an engineer and what-not. I think it would save time if we get right down to the meat of this matter and have him say just what he saw about the area.

Mr. Scampini: I am just as anxious as anyone to save time. We are dealing with a subject that is very technical, and I very respectfully ask leave to have him state exactly what findings led to the conclusion of the witness that he will eventually give.

The Court: I don't think anyone is objecting to him stating his conclusion, but every physical movement he made in connection with the matter is unnecessary, I would think. I think it could be shortened by getting right down to the heart of the matter and asking him—I have seen dozens of the experts get on the stand—I don't say it was any criticism—but they usually ask them questions and if you let them go they are like a horse without a bridle, they just keep on galloping for such a long time. If you just confine them on [465] direct examination and then if you want to know what their opinion is concerning some matter we will get along more rapidly.

Q. (By Mr. Scampini): Mr. Norris, in the course of your investigation did you take samples of the rocks and formations found on the property of the Cal Bay Corporation? A. Yes.

Q. Did you study those samples? A. Yes.

(Testimony of Byron B. Norris.)

Q. And rocks? A. Yes.

Q. Did you determine the nature of those rocks and samples? A. I did.

Q. Did your studies include a consideration of the Mt. Diablo region in general?

A. Yes. That was the main basis for the Geological Survey.

Q. When you go prospecting for oil or gas structures, generally speaking, what do you look for particularly?

A. Particularly you look for formations that are known as productive of oil or gas in this State, and, secondly, you look for a structure on that property.

Q. What do you mean by "a structure"?

A. I mean a folding of the formations of such a nature they would contain oil or gas in commercial quantities.

Q. Will you describe the nature of the structure or formation which gather oil or gas in quantities that you generally encounter in your profession, what types are they?

A. The usual one is an anticline. There are also many fields in California that are formed against a fault. [466]

Q. Will you describe what an anticline looks like, or fault looks like to a geologist?

A. I think the best illustration of it would be the map showing Kettleman Hills; it has an elongated fold here (indicating on map).

Q. I will show you a picture for the purpose of illustration, if the Court will permit me——

(Testimony of Byron B. Norris.)

Mr. Bourquin: Are you going to offer the book or the picture? Can't the witness tell us——

The Court: Well, nature forces it up to the top and makes a kind of roof and you have oil underneath; is that right?

The Witness: That is right.

Q. (By Mr. Scampini): Describe how anticlines manifest themselves to a geologist looking at the location.

A. They manifest themselves mainly by——

Mr. Bourquin: Your Honor, this examination now—I don't want to be technical, but asking him how they manifest themselves would seem to be basing it on the anticipated opinion that he is going to say there is a structure, a producing structure, and to ask him about that now is testing him. I know the court allows some latitude.

The Court: I do. I don't want to cut anyone off from presenting the matter, but these things can be simplified some. The subject matter does not become more important by reason of his elaboration. It is either important or it is not. I [467] think the witness can tell what was the nature of the structure that he in his opinion was present on this property. That is the important thing, isn't it? We can be here for days if you are going to have a description geologically——

Mr. Scampini: May it please the court, may I again point out that one of the principal issues in this trial when it finally reaches the jury is the probability of commercial discovery at the sand

(Testimony of Byron B. Norris.)

drilled through in November, 1944, and so I know it will probably be determined by experts, geologists who have studied this structure, and their opinion will have more——

The Court: I am not cutting you off from that. Ask him what he found.

Mr. Scampini: But I have not started on the location yet and your Honor is already asking me, if I may respectfully say so, to ask him what he found. I don't know whether he found anything, your Honor. I am trying to find out. He has other maps there that he will lead up to.

The Court: Don't leave out anything you think is vital to the case. I don't want you to do [468] that.

Q. (By Mr. Scampini): How many weeks or days did you spend on this structure making your studies and observations?

A. My first visit was, I would say, about a week, and then I came back to check for a couple of days.

Q. In addition to looking for a source of rocks which are productive in other fields and structures, did you look for anything else when you studied the location for possible drilling?

A. We looked for seepage.

Q. What do you mean by seepage?

A. Any surface evidence of oil or gas.

Q. Did you find any surface evidence of oil or gas on the location that you were studying?

A. The gas well on the Mac Roche property.

Q. Did you find any indications of oil seepages in that neighborhood?

(Testimony of Byron B. Norris.)

A. Yes, in the neighborhood of Paria there are two old wells. At this point here (indicating), there are two old wells known as the Harding well, I think, depth 978, and the Atlas well, depth 1823, that I visited. They were producing small amounts of gas up through water. One of the wells showed a slight brown stain of oil.

Q. Do you know when those wells were drilled?

A. It was many years ago. I don't know the exact time, no.

Q. After looking for structure, source rocks, seepages, are there any other indications that you looked for in passing upon a possible location for drilling?

A. Yes, you [469] examine all outcrops to determine the dip of the various formations.

Q. Did you find any source rocks on the property of Cal Bay Corporation which are productive of gas or oil in other fields in California?

A. Yes, the eocene formation outcrops over most of that area.

Q. What is the eocene formation in geology? What does it represent?

A. It represents formations of the eocene age.

Q. Did you find any other formation or structure which is productive in other fields?

A. The miocene is immediately to the north.

Q. Did you find any other formations besides the miocene and the eocene?

A. Cretaceous outcrops to the south.

Q. Did you make a study of the formations

(Testimony of Byron B. Norris.)

encountered in the course of drilling the wells at Rio Vista and McDonald Island? A. Yes.

Q. Did you do that prior to your making a report? A. Yes, sir.

Q. To Cal Bay?

A. As much as was available at that time. There wasn't very much available.

Q. Can you state from what information the gas produced at Rio Vista is coming, or was coming?

A. It is coming from the Domengine formation.

Q. What is a Domengine formation?

A. That is one of the formations of the eocene age.[470]

Q. Can you state from what formation of production the McDonald is coming?

A. It is coming from the Martinez age, which is a little formation between the eocene and the cretaceous, known as the paleocene.

Q. Do you know of any other fields in the immediate neighborhood besides McDonald Island and Rio Vista which are productive of gas?

A. Yes, the Tracy Field.

Q. From what formation is the Tracy Field producing?

A. That produces from formations of the cretaceous age known as the Panoche.

Q. In the study that you made of rocks and formations lying on the property or visible on the property of Cal Bay, did you ascertain whether or not you had eocene formations of the Domengine character?

(Testimony of Byron B. Norris.)

A. Not in my original survey. They are several thousand feet underground. The surfaces eocene formation, yes.

Q. Did you find any cretaceous formations?

A. Yes.

Q. Did you prepare a geological map of the structure of the Cal Bay Corporation?

A. I did.

Q. Where is that map?

A. It is right underneath this other one.

Q. What is the map you are now looking at, Mr. Norris?

A. This map is a large scale map. It is the official map of Contra Costa County, California.

Q. What are the colors which are shown on the map in the [471] square to the righthand corner?

A. In order to show the geology, and especially the formations and structures, I took a section which is colored on this map and transposed all of the geology, so that you could see it all on one map. The various formations I have listed right on the map here as *we down* on the righthand side (indicating).

Q. Let us start from the river. Where does the river show up on that map?

A. This is the Sacramento River (indicating).

Q. At the very top of the map?

A. At the very top of the map. This is Suisun Bay.

Q. Where do the properties of the Cal Bay Corporation appear on the colored portion of the map?

(Testimony of Byron B. Norris.)

A. Within this heavy line here (indicating).

Q. How many miles from the shore line of the river do the Cal Bal properties lie?

A. Well, about three and a half, I would say.

Q. Starting from the river, what does the yellow color represent?

A. The yellow color is terrace deposits. It is a later deposit made by erosion of the older ones.

Q. And immediately following the yellow you have—that indigo blue?

A. This formation is miocene.

Q. What is that color?

A. That is a sort of red.

Q. What is the name of that formation?

A. It is miocene.

Q. Does the miocene lie above or below the eocene? [472]

A. Above. It is a very bold outcrop right along this line, which very clearly deliniates the structure.

Q. Are there any fields in California producing from miocene formations?

A. Oh, many fields, yes.

Q. What fields, for instance?

A. Well, Kettleman Hills and fields down in the Los Banos basin. There is quite a lot of the west side fields of the Midway and Sunset area that are miocene.

Q. Following the miocene, what did you locate on the property?

A. I located these various formations. What I did in the preparation of this map was to take the

(Testimony of Byron B. Norris.)

state geological map and transpose it right onto this map, as nearly as I could possibly, and then investigated this section with reference to the property under consideration.

Q. Following the miocene you have a yellow color here, haven't you, or a kind of light brown?

A. Yes.

Q. What is that formation?

A. That is the upper eocene in this area here.

Q. That is upper eocene. Does that form the contact between the eocene and the miocene formation?

A. Well, there is a small amount of oligocene in here.

Q. Does that show on the map?

A. Yes, this little area in here.

Q. In other words, the oligocene is a sort of separation sand between miocene and eocene, is that right?

A. Yes. [473]

Q. Now, is the eocene formation productive of oil or gas in any fields of California?

A. Yes.

Q. What fields?

A. Colinga, Oil City Pool, and at Santa Maria.

Q. Did you find any cretaceous on this location?

A. Yes, this purple is upper cretaceous.

Q. And the upper cretaceous is found immediately below the eocene, is that right?

A. Well, there is an upper eocene and a lower eocene. There is a very small portion of that on this map.

Q. Then below the cretaceous, what do you find?

(Testimony of Byron B. Norris.)

A. The upper and lower cretaceous—then you find this disturbance of Mt. Diablo here, the older rocks of the Franciscan and Jurassic. That is the Mt. Diablo right in this area.

Q. Now, is the upper cretaceous productive of any oil or gas in California? A. Yes.

Q. Where? What fields?

A. In Coalinga and Santa Maria.

Q. Where is the Tracy gas field producing from?

A. Oh, gas?

Q. Yes.

A. I misunderstood you. Yes, as far as gas, the Tracy and Vernalis fields are both producing from the cretaceous—from the Panoche formation.

Mr. Scampini: I now offer in evidence as Defendants' exhibit next in order the official map of Contra Costa County prepared by Mr. Norris. It has an exhibit number for [474] identification.

The Clerk: It is in evidence at No. 10, Mr. Scampini.

Mr. Scampini: I ask that it be admitted in evidence, your Honor.

The Court: Do you want No. 11 admitted in evidence, too?

Mr. Scampini: Yes, your Honor. I was going to ask that No. 11 be admitted in evidence.

The Court: If there is no objection, it will be admitted.

(Defendants' Exhibits 10 and 11 For Identification were thereupon received in evidence.)

Q. (By Mr. Scampini): I now refer you, Mr.

(Testimony of Byron B. Norris.)

Norris to a line which has been drawn on the colored map prepared by you over which appears the word "Anticline." Will you please state what that represents?

A. This line represents the apex or the very top of the fold which runs through this area.

Q. What area?

A. This area here (indicating). It runs from about this point here——

Q. Please name the points for the purpose of the record.

A. This is the Kirker Pass road here. It runs through the Bailey Pass road, and it meets a fault in the Willow Pass road.

Q. Where do the properties of the Cal Bay Corporation lie in respect to that line which indicates the apex of an anticline?

A. Inside this heavy line right here. The apex of this anticline runs diagonally right through the property.

Q. Mr. Norris, in relation to a gas well seepage that you say was located on the property of Cal Bay, how many feet, [475] approximately, would you say, or did you note the apex of the anticline lay or was found?

A. I don't believe I have ever measured that. The gas seepage is right here, and the top of the anticline would run some distance to the north of that.

Q. Approximately how far from the gas seepage would you say the top of the anticline was located by you?

(Testimony of Byron B. Norris.)

A. Well, I would say it was at least twelve hundred feet.

Q. About twelve hundred feet?

A. That is just an estimate.

A. The apex of an anticline is the point at which, by means of the dip of the various formations, you determine as the very crest of a fold.

Q. Now, what do you mean by "dips" of a formation?

A. In any fold the outcropping formation dips away from the apex. In this instance it was possible to measure them, principally in the road cuts. This miocene outcrop here is very prominent all through the area there, so that it pretty well defines that side of the structure. There were outcrops especially here in the Bailey Pass Road, the Kirker Pass Road, and also here on the Willow Pass, and there were others along the hill [476] here.

Q. After your studies of the outcrops and the dips did you reach any conclusion as to whether or not an anticline was present on the property of the Cal Bay Corporation, itself?

A. Yes, definitely there is an anticline.

Q. What was the trend of the anticline located by you?

A. Well, it follows this green line, here. It has a northwest-southeast trend.

Q. Can you state whether or not that trend parallels the trend of the anticline or structures found at Rio Vista or McDonald Island?

A. It does.

(Testimony of Byron B. Norris.)

Q. And when you do go looking for locations upon which to drill wildcat wells, do you take into consideration the trend of the structure?

A. Yes, that is very important.

Q. What consideration did you give to trend?

A. In an area where there are several fields it has been found from experience that most of the productive areas correspond with that particular trend. In other words, the folding action of the country has pretty well the same pattern.

Q. Mr. Norris, when you find a structure would it be sufficient to locate a structure for the purpose of being satisfied that it has oil or gas in it, or would you have to have something else in relation to that structure before you could have any oil or gas?

A. Basically, you would have to have the proper formations, of course. You would have to have a structure that was sealed.

Q. What do you mean by a sealed structure?

A. I mean a structure [477] that by reason of folding or faulting creates a trap that will hold any oil or gas it could accumulate.

Q. Did you find any closing of this structure on the Cal Bay property?

A. Yes.

Q. How did you note or upon what factors did you base your conclusion that this structure was a closed structure?

A. I based my conclusion upon this section of the structure from the Balley Pass over in which you have an antiline dipping in this direction (in-

(Testimony of Byron B. Norris.)

dicating), which comes up against the fault at that point, which makes a closure.

Q. How do you know that the structure is closed on the flanks of the anticline?

A. You know that by an examination of the various outcrops. In this instance you have a gentle fold of about 25 degrees to the north and approximately the same to the south.

Q. How do you know that the anticline in this case is closed at the southeast end of the anticline?

A. There is also a fault that goes through Bailey Pass. However, that would not be necessary to make a closure, because your dip is in this portion, which would cause anything to accumulate up in this area (indicating).

Q. Did you make a map of that anticline——

The Court: You mean the angle of the dip is in that direction? A. Yes.

Q. (By Mr. Scampini): Did you make a map of the anticline [478] and did you locate the map on a Government map entitled, "The California Antioch Quadrangle"?

A. Yes, here (indicating).

Q. What is that map to which you are pointing?

A. These are topographic sheets of the Antioch and the Mt. Diablo Quadrangle.

Q. Where do you obtain those maps?

A. They are made by the United States Geological Survey.

Q. Will you please point out where you located the anticline that you found lying on the Cal Bay

(Testimony of Byron B. Norris.)

properties in relation to the topography of the map as shown on that map?

A. This black line represents the anticline, the apex of the anticline.

Q. To the south of the anticline did you notice anything unusual with respect to the physical conditions of the property?

A. There is a prominent fault that runs in a southeast direction along the base of the hills, there, ending up in the Mt. Diablo uplands.

Q. Where does that fault emerge on that property so that it becomes visible to the naked eye?

A. It is visible here in the Willow Pass Road, in the cuts there.

Q. With reference to a piece of property owned by John S. Faria, are you familiar with that piece of property? A. I have been over it, yes.

Q. I will ask you whether or not the physical appearance of that piece of property was observed by you to be unusual or out [479] of the way?

Mr. Bourquin: Just a minute, your Honor, we are going to object to that as irrelevant and immaterial. I understand the John S. Faria property is not included in this lease, and I do not think that the attributes of the John S. Faria property become important at all, unless it is to test the affirmative assertions respecting the bordering property.

The Court: Maybe the witness is going to testify that that caused him to come to some conclusion with respect to the adjoining property. It is hard to say. I will overrule the objection for the time being.

(Testimony of Byron B. Norris.)

A. Why, yes. You will notice this black line labeled "Fault" goes right through that property. That fault is not just a line. It covers a considerable amount of area through here, I discovered from my field work, so that I would say that that property, or at least the great portion of it, is right in that fault zone, and I would not consider it as probable territory.

Q. By "probable territory," do you mean probable for the discovery of oil or gas in commercial quantities? A. Yes.

Q. The fault that you have just indicated with your stick, is that the same fault that you have referred to on the topographic map?

A. Yes.

Mr. Scampini: I now ask that the exhibit marked Defendants' Exhibit No. 12 for identification be admitted into evidence. [480]

The Court: Is that all one exhibit?

Mr. Scampini: No, your Honor. No. 12 is only this map here. I will ask that the topographic map of the Antioch Quadrangle be admitted in evidence as Defendants' Exhibit next in order.

The Court: Defendants' Exhibits 12 and 13 for Identification may be admitted.

(The maps in question, heretofore marked Defendants' Exhibits 12 and 13 for Identification respectively, were thereupon received in evidence.)

(Testimony of Byron B. Norris.)

Q. (By Mr. Scampini): Are you familiar, Mr. Norris, with Hager's book on "Practical Oil Geology"? A. Yes, I have it.

Q. I show you a picture found on page 12 of the book, and I will ask you to state what that picture represents.

Mr. Bourquin: We object to it, your Honor, as irrelevant and immaterial, unless it is a picture of this property, and this information can be authenticated.

Mr. Scampini: I am only going to use it for the purpose of illustration as to what an anticline looks like in a cross-section.

The Court: Can't you draw it?

Mr. Scampini: I was going to have a photostat made if your Honor admitted it for that purpose.

The Court: I would think that Mr. Norris could draw a picture of that very quickly. [481]

Q. Couldn't you?

A. Yes, your Honor, I could.

Q. (By Mr. Scampini): Will you please draw a picture of a typical anticline?

A. (Illustrating at the board.) An anticline, as you look at it, is simply a fold of that nature, a true anticline, your formation coming up and folding over. That may continue for some distance in this direction.

Q. And at the ends of the anticline, what is the technical name that you give to the ends of an anticline? A. The ends are known as the plunge.

(Testimony of Byron B. Norris.)

Q. And the sides of an anticline are known as what? A. The flanks.

Q. Did you notice whether or not the northwest plunge of this anticline found by you on the Cal Bay property plunged or not? A. Yes.

Q. Against what did it plunge?

A. It comes up against that fault there.

Q. Have you formed any opinion as to whether or not the fault against which it comes up had the effect of sealing the anticline as to that end?

A. Yes, I believe it did.

Q. With respect to the southeast plunge of the anticline will you please point out on the map there, Mr. Norris, that feature?

A. That would be coming in this direction (indicating).

Q. Did you notice against what that plunge comes?

A. In my field work I discovered this: It apparently plunged in this direction, because you get about at the Bailey Road and then it [482] seems to flatten out, then it comes up in this direction, that is, it plunges in both directions toward Bailey Road—not a great amount, but slightly.

Q. Did you notice anything peculiar or out of the ordinary with respect to the outcroppings on Bailey Road? A. Yes.

Q. Now, point out where Bailey Road lies on the map.

A. Bailey Road is this road coming through here and going to the hills toward Pittsburg.

(Testimony of Byron B. Norris.)

Q. Does it bisect at a right angle the anticline that you located there?

A. Yes, sir, it circles to a right angle.

Q. Please state what you observed with respect to the outcroppings noted by you on the Bailey Road?

A. The south flank or the dips are very evident at this point, here. It gives you a good basis for determining that flank of your anticline. Further, as you come up here, there is evidence of faulting to the right, here. There is a big sink and also a large spring. In doing my field work I came to the opinion that this area from the Bailey Road on over to Kirker Pass was badly faulted—probably several faults across it.

Q. Referring you to Defendants' Exhibit No. 12, will you please point out on the map there the Bailey Pass Road?

A. Yes. The Bailey Pass Road is so labeled there.

Q. Will you please state through what property the Bailey Pass Road goes?

A. It goes through this Sultan and Kellar property, and the Mt. Diablo ranches. [483]

Q. Do you know whether or not the Kellar property was leased at that time by anyone for oil and gas purposes? A. At the time——

Q. At the time you were working there.

A. I believe not at that time.

(Testimony of Byron B. Norris.)

Q. Did you observe any geological work going on on that property at the time you were working?

A. Yes, I did.

Q. Whom did you notice working there? Whom did you observe?

A. I noticed in a great many places——

Mr. Bourquin: This is not material. Are they going to prove the value of the subject property by reputation? Let us get back to the Faria property.

Mr. Scampini: If the Court please, it will have great bearing in determining the value of this property in that the Standard Oil Company drilled a well on the Kellar property, which it obtained in competition with Mr. Faria, drilling it simultaneously, and I am sure counsel on the other side will shout vehemently to this jury that the Standard Oil project ended up in a dry well, and we have ample reasons to prove it should have been known it would be a dry well from the beginning.

The Court: I think I would disallow that. Even petroleum engineers make mistakes. They drill lots of wells that are not successful. I do not see how that is competent evidence before this jury. That is in the speculative field. We [484] will take a recess until two o'clock, ladies and gentlemen. Please bear in mind the admonition of the court.

(A recess was taken until two o'clock p.m.)

Afternoon Session

January 29, 1946, 2 P.M.

BYRON B. NORRIS

recalled.

Direct Examination

(Resumed)

Mr. Scampini: Your Honor, before continuing with Mr. Norris, I would like to offer an exhibit which I should have done yesterday, as part of an exhibit which is in evidence, the two tickets, No. 6757 and 6758, which are part of the exhibit as to the Johnston formation test held on the 20th and 21st; that is a defendants' exhibit.

The Clerk: Are you offering these as part of another exhibit, or separately?

Mr. Scampini: I will offer these as Defendants' Exhibit next in order. They are supposed to be a part of the test made by the Johnston people on October 20th and 21st, your Honor, and I forgot to offer them yesterday.

(The documents were Marked Defendants' Exhibit 27 in evidence.)

[Defendants' Exhibit No. 27 appears on pages 1254 and 1255.]

Q. (By Mr. Scampini): Mr. Norris, referring to the official map of the California Oil Fields, Blandsford's Map, which is now in evidence, will you point out on that map for the benefit of the jury a typical anticline found in some of the oil fields of California?

A. Yes, I will. I will refer first to this Buena Vista Hills, part of the Midway Oil Field, and this

(Testimony of Byron B. Norris.)

section represents a section right straight across the San Joaquin Valley and covers from Taft to Bakersfield on the west side of the valley. The formation in this field is also an anticline of Elk Hills. There is the second fold of Buena Vista Hills, the third fold here on the Midway Field. Going in the other direction, you have a series of fields here, Fruitvale, Kern Front, and Mount Poso. These are known as the east side fields of the San Joaquin Valley. Each of them have been very productive due to the fact of a fault trap—you note these all dip this way.

Q. When you say “this way” will you indicate geologically the direction?

A. To the west on this particular section. The particular point is, the oil coming off these four basins is caught by that fault. That section in general is a pretty good idea of the California structures usual in the——

Mr. Bourquin: May I interrupt? For the purpose of the record, I understand the witness was just referring to Kern County. He is referring to things in Kern County.

Mr. Scampini: Referring to a cross-section of the valley fields of Kern County.

Mr. Bourquin: Kern County.

Mr. Scampini: Except——

The Court: Counsel, I don't want to interrupt this examination, but is there any dispute as to the general geological factors? I thought the question in this case was whether or [486] not this was a

(Testimony of Byron B. Norris.)

field or an area in which gas could be produced in commercial quantities.

Mr. Bourquin: I don't think there is any dispute.

The Court: It seems to me we are taking up a lot of time in explaining generally the geology of California to the jury. I suppose, Mr. Norris, it is true, is it not, in California there are many formations, geological formations?

The Witness: Yes, your Honor.

The Court: Wherein oil has been found and many where oil has not been found?

The Witness: Yes, your Honor.

The Court: I don't suppose there is any dispute as to the geological formations. This jury does not need to be enlightened as to the geological formations in California. The only question in this case, as I understand it, and understood it at the pre-trial conference regarding this particular place, what does the evidence show as to whether or not there is a gas deposit of commercial proportions? If the witness has anything to say on that subject that is pertinent, all right. Anything else to me appears to be entirely beside the issue and unnecessarily prolongs the trial. I think this is a matter that should have been determined at the pre-trial conference. It was not called to my attention or I would have limited the issues at the pre-trial conference. I have no doubt the witness knows something about the geology all [487] over California, as probably do hundreds of other experts in the

(Testimony of Byron B. Norris.)

business, but our inquiry is limited particularly to this precise place.

Mr. Scampini: That's right.

The Court: Is a deposit of gas of commercial proportions there? Whether it looks like some place else in California, or whether it has an anticline formation like some other place might be a reason the witness might give for some conclusion he might come to, but it is not germane to the issues here, and I feel that you counsel may, if you think you might agree on the matter, I will dismiss the jury for a short period of time and conduct a pre-trial right now, and limit the issues so the jury won't have to sit here for days and listen to matters that are not really the issue. Maybe you and counsel can come to some agreement.

Mr. Bourquin: I said at the outset in the statement of the case that we did not feel the matter was not one for theorizing, and because we were here dealing with a gas property, we were dealing with a property that had been opened to 5000 feet. I think that is some reason why we should limit the investigation to this property without going into other property in Southern California, or some place else, and saying, "This looks like that." We don't have to do that. We should get to the bottom of the hole.

The Court: I think probably you would agree that the [488] witness who is on the stand and who made an examination will have come to a conclusion that it was a field that warranted——

(Testimony of Byron B. Norris.)

Mr. Bourquin: Exploration.

The Court: Exploration. That is about all that this testimony amounts to. I suppose the Government would concede that.

Mr. Bourquin: Yes, your Honor.

The Court: Therefore, the only question involved is, What did they find? What is the evidence as to what is there? You, of course, may produce the opinion of experts as to that.

Mr. Scampini: I desire for the purpose of the record to again explain the point I am driving at, namely, that the question of reasonable probability of commercial discovery at the lower depth which was penetrated on or about November 27, 1944, but as the evidence will disclose, and should your Honor permit the evidence to come in as to the geology of that structure and the geology of a structure can only be explained to the jury by an expert who has studied the structure——

The Court: I am not denying you that right. All this jury needs to know is what does the expert say about this structure?

Mr. Scampini: I was just coming to that.

The Court: It does not help the jury to know what the geology is all over California. What has he got to say about this particular structure?

Mr. Scampini: I am not going to ask the witness for anything about the geology of California. This morning he drew an outline of an anticline and during the noon recess it was pointed out that other anticlines are all shown in the official map.

(Testimony of Byron B. Norris.)

which is one of the exhibits in evidence. I was only going to ask him to explain for the benefit of the jury what an anticline, monocline, and a trap——

The Court: Well, he has answered that.

Mr. Bourquin: He just asked the witness to point somewhere as to the geology down in Kern County. It seems to me if there is any purpose going through the other sections of California we might as well open it up for Wyoming, too.

Mr. Scampini: It might be proper to do that.

The Court: I don't think the court should allow the inquiry to go that far afield. Anything that is pertinent to this particular property the witness may testify. As I say, we will take a recess in the case unless counsel can come to some agreement, because I don't think the inquiry should be broadened out to that extent here. How far are you willing to stipulate as to the general geological facts here? I suppose you have taken it up with some experts of your own?

Mr. Bourquin: Yes, we have, your Honor. In discussing this matter—Now, I don't know that I quite understand the contention of counsel on the matter, but if he will state the position he seeks to establish here I think maybe we can agree [490] to it.

The Court: Would counsel prefer to have the jury excused while that is being done?

Mr. Scampini: I don't think it is necessary. I propose to prove by the witness and another expert,

(Testimony of Byron B. Norris.)

Mr. John del Eau, who made a geological study of these matters, that an anticline of ample proportion exists on the property of Cal Bay Corporation, and Joseph Faria, Jr., in so far as the leases are concerned; that the anticline is a closed anticline, closed by the dip on the west, closed on the north-west, showing just where that dip is, closed on the southeast end by another dip called the Bailey dip, and thereby the anticline is a closed structure. I thereafter propose to prove that every formation which is very productive of oil or gas in commercial quantities in other fields of California immediately surrounding and in the vicinity of this field, everything found that are visible to the naked eye on the structure is there and there is ample drainage surrounding the structure, and we have the necessary source for the production of oil or gas, the necessary trap for the accumulation of oil or gas, and that he made a recommendation for the location for the well which thereafter was drilled to 4972 feet and penetrated the Martinez sand.

The Court: Well, I think that is proper. Maybe you can get agreement as to these geological factors, but the only question in this case was, granting all those things, is there [491] any issue, and that is your duty, you are carrying forward, is there any evidence to show that there exists a structure over here at this particular place?

Mr. Scampini: I am coming to that.

The Court: I am speaking perhaps a little outside the record. There are, of course, many struc-

(Testimony of Byron B. Norris.)

tures of the kind you speak of where there is gas and oil contained, but the only question you have is whether or not in this case there is evidence to indicate whether or not there was gas in commercial quantities.

Mr. Scampini: I desire to address your Honor on that point. Your Honor will recall the evidence that when we penetrated the Martinez sand at 4972 feet we penetrated it three to five feet, according to the testimony of Mr. May, and in coming out of the hole for the purpose of taking a core the pipe got stuck, and two days later the well blew in and the pipe——

Mr. Bourquin: Blew out.

Mr. Scampini: Blew out. The casing collapsed and right then and there the Navy said, "Get out of this property," and they prevented us from subjecting that sand to a test for——

The Court: That is the very issue you are entitled to go into. What is the opinion of the expert you have as to what those facts indicate as to the presence of gas in commercial quantities? You will have full opportunity to do that. [492]

Mr. Scampini: And that is what I am laying the foundation for his opinion which he will express at the conclusion of his testimony. Furthermore, this witness was on the premises, he was the supervisor in charge, the engineer in charge of the drilling of this well. He knows what was discovered in that well.

Mr. Bourquin: We don't have any objection to

(Testimony of Byron B. Norris.)

them going into all the facts and the character of the property here, and in that particular area, but we are not in a position to litigate with these people on the merits of structures down in Kern County, or Long Beach.

Mr. Scampini: I don't propose to go to Long Beach for my proof. I am trying to illustrate to the jury what an anticline or a monocline looks like, or a trap.

Mr. Bourquin: Well, you just looked at it at the board over there.

Mr. Scampini: I ask leave for permission to conduct the examination along the lines I have outlined.

The Court: I think it takes too long. I think you should confine your proof to a description by the witness of what the physical facts are at the property, and what his opinion concerning that is. That is all. I don't think it is necessary for counsel, in the examination, to inform the court and jury as to all these extraneous matters. I think all you have to do is to ask the witness to describe the geologic structure [493] at the property, what he found there, what his opinion is. That can be done in ten minutes. I have seen it done in dozens of cases. In pursuance of my power to supervise the case, I will do so along the limits of examination just referred to.

Q. (By Mr. Scampini): Upon the conclusion of your investigation did you form any opinion as to whether or not the structure located by you on

(Testimony of Byron B. Norris.)

Cal Bay Corporation property had reasonable possibilities of containing therein oil or gas in commercial quantity? A. Yes.

Q. What did you recommend to Cal Bay Corporation to be done?

A. I recommended that a test well be put down to produce this oil and gas.

Q. In reaching that conclusion did you investigate the possible drainage area surrounding this structure? A. I did.

Q. What effect or what weight does the possible drainage area bear in relation to your conclusion or your recommendation?

A. In order to have a commercial field of oil and gas there must be an area of substantial size that can drain into this structure. I think perhaps I can best illustrate it on the map, here. We will take this, confine ourselves to this little area right here.

Q. What map are you referring to?

A. This is——

Q. Defendants' Exhibit 10.

A. Yes. On the south, here, they have this fault, and that limits the drainage in that area. Drainage was toward this anticline. On the north, or northeast, you have for miles, several miles on across here, I would say eight or ten miles, this whole area you drain up into this area. The dips in this direction are very regular as far as it can be observed, on out across and under the bay. I

(Testimony of Byron B. Norris.)

think in this case here it is safe to say they have several square miles, that would be reasonable.

Q. To drain into this area. To what area are you referring when you say "this area"?

A. The area bounded on the map, the properties held by the Cal Bay Corporation.

Q. Did you have anything to do with what was done with respect to fixing the location for drilling a well?

A. Yes. That was one of the first——

The Court: May I interrupt again? I am not attempting to cut you off as to having this particular witness give the geological factors with respect to this property that he took into account in coming to his conclusion. You can ask him any question along that line you wish. All that I was cutting you off from doing was wandering into a long geographical history. The witness can state his opinion of the geological situation in this area. I think the witness understands the court. I am going to just interrupt again and ask you what were the geological factors that you took into account at your examination of this property that led you to decide that you would advise these people to drill a well? A. All right. [495]

The Court: After all, he made rather an unlimited examination.

The Witness: The first thing was to determine the nature and extent of the anticline. This was determined by meeting the various dips. I tried to show them all on this map. They run from 20 to 30 degrees, dipping this way, north.

(Testimony of Byron B. Norris.)

Mr. Scampini: "This way" is north?

A. And this way to the south. Once having determined this anticline, then the next thing to determine was where the best to drill was for the location of the well. Not knowing that, I checked the area.

Q. What area are you referring to?

A. This area, right here, the axis of the structure from the Kirker Pass Road on to Bailey Pass Road, and on over to Willow Pass. This area I discarded for the reason I thought it was faulted, that area——

Q. Which area?

A. The area between Kirker Pass and Bailey Road, where is included the Kellar property.

Mr. Bourquin: Is that property in this area?

Mr. Scampini: No, it is not.

Mr. Bourquin: I submit the witness is not answering the question. He was asked how he determined this property had possibilities. He is indicating that he went out and made a study of some other property entirely. I thought he said he was employed to make a study of this property.

The Witness: May I explain that, your Honor?

The Court: Yes.

The Witness: I was informed at that time that Mr. Faria had leases clear on through to this point (indicating). I was retained to look the whole thing over and select the better proposition. I am sorry I mentioned that, the name of that property, it happened to be a large parcel there, but getting back to this, I determined that the best spot for a well

(Testimony of Byron B. Norris.)

was the location shown in the map. In determining that I took into consideration the position of the anticline and its relation to this fault, the anticline coming up this way, and determined the point on the property, the highest point that would be safe to drill in order not to contact that fault. In making a selection where you are up against a fault, it is necessary to make some study to keep back from the fault so it won't be contacted. I made a location based on my studies there, and from my original work, and so on.

Q. Have you given us all the factors that you took into consideration in reaching your conclusion to make your recommendation? A. No.

Q. Give us the balance.

A. The conclusion that I came to were based on a study of the production in various fields, like Rio Vista and Tracy. At that time there was not a great deal of development in this country, but there was some information. I also studied "Geology of California," by Reid, which is a good section through this territory. The purpose of this was to determine [497] the formations we would likely contact at a reasonable depth. We could expect to produce gas or oil. In doing that I found that we should start on the eocene. The eocene is productive in neighboring gas fields. Then we would expect the cretaceous for the reason it would lie right here below it. I might say that this section through here is what we call a normal section. Then the age is considered, and necessarily with the commencement here as we go down it becomes older as far as the age of the formations are concerned.

(Testimony of Byron B. Norris.)

Q. (By Mr. Scampini): Mr. Norris, if I may interrupt, when you say "this" and "this" and "this," the record does not indicate to what you are referring.

A. Therefore I should say you start up here at the terrace deposits, this level (indicating), then the miocene, then the oligocene, upper eocene, lower eocene, upper cretaceous and lower cretaceous.

Q. Would you normally expect to encounter those formations in the course of drilling the well?

A. Yes. I determined that as far as I was able to determine for the purpose of making the contact I believed at about 5000 feet.

Q. Following your recommendation to Cal-Bay Corporation at that time, what was done about it?

A. Well, as far as the location was concerned they immediately started work there building roads and grading out with bulldozers the location. I know that because a few days later I came back to check the area. They were at work there and using a [498] bulldozer they pushed off the side of the hill so we could get the location on the very top of the structure. As far as the report was concerned it was for two purposes; first, to pick a location for development of the property, and, second, to file with the State Division of Corporations, with the application to sell securities.

Q. You have used the word "dips." Will you please explain to us what dips are in geology?

A. Dips are a measurement in degrees from the horizontal. I have placed here the marks to indicate dips.

(Testimony of Byron B. Norris.)

Mr. Bourquin: Will you point to where you are referring so we will have it in the record, what place on the map?

A. Well, the dip right above the location, there, in section 21, the northwest quarter, I have indicated there a dip with an arrow pointing in the direction in which it is dipped. How that is accomplished, if you take a Brunton compass to measure, it is kind of a level, measure the dip away from the horizontal and by checking here around the structure, you get what we call the general regional dip of that particular area.

Mr. Scampini: What bearings have dips on the development if you have an anticline?

A. Well, dips in themselves indicate—If you come up this way your dips would come this way, and then when they start the other way then you know you have reached the crest of the anticline.

Q. On one side of an anticline the dips will point in one direction [499] to the top of the crest and on the other side they point in the opposite direction?

A. Yes.

Q. What were your duties in connection with the drilling of the well, what did you have to do with it?

A. My work was, my duty was in taking the cores and recommending the various tests, and, in general, the technical supervision of the drilling operation.

Q. In the course of drilling the well, did you visit the well?

A. Yes.

(Testimony of Byron B. Norris.)

Q. How often would you say you were there?

A. I was there at the well, I was there considerably through 1943.

Q. In the course of drilling the well, were any cores obtained from the well? A. Yes.

Q. Who examined them?

A. I examined them and I also recommended that they be checked by a micro-paleontologist.

Q. Was that done? A. Yes.

Q. What was the purpose of examining the cores?

A. Well, there are several purposes of examining cores. They indicate, of course, the formation you are going through, and also the character and dip of it. In other words, your sand or shale or whether digging—dipping sharply or on the flat, and by submitting these to a micro-paleontologist he is able to determine by looking at the clay, for example, the age of the particular formation. That is one of the tools we use in drilling, because, for instance, we know it is eocene at the surface. We [500] have cause to believe some drainage there on the Domengine formation, which is the producing formation in this neighboring fields, and by making a systematic analysis of those cores we were able to estimate approximately where that would be.

Q. How is a core taken?

A. A core is taken by a special bit which cuts right around a circular location and then what we call a catcher is used to grasp that and bring it up.

(Testimony of Byron B. Norris.)

For instance, if you drilled out or around that board you would have a round section of that board (indicating). [500-a]

Q. In the course of drilling the well, will you please state what, if anything, you observed in the nature of oil and gas showings during the year 1943?

A. Well, we had minor gas showings, I would say, from twelve hundred feet down, but our big showing came at 4,268.

Q. At what part of the year did that show?

A. I believe it was either September or October. It was the fall of the year.

Q. How did it manifest itself?

A. By gas coming up with the mud and breaking out in the ditch.

Q. Do you know or have you formed any opinion as a result of the examination of the cores in what formation the first showing of gas manifested itself?

A. I believe it was in the Domengine formation.

Q. At what depth did you encounter the Domengine formation in this well?

A. If I may refer to my notes here, at 3,820.

Q. Is the Domengine formation productive of gas in commercial quantities in the fields immediately surrounding the Cal-Bay property?

A. Yes, sir.

Q. What fields?

A. The Rio Vista field is the largest in that area.

Q. What thickness do you normally expect in the Domengine formation?

(Testimony of Byron B. Norris.)

A. Well, it varies from, I would say, 300 to 600 feet.

Q. When this showing of gas became noticeable, what did you [501] recommend be done?

A. The first thing was to kill the well so we would be able to get out of the well with the drill pipe.

Mr. Bourquin: I object to recommendations, your Honor, as something having no relevancy or materiality. He can testify to what was done and what he saw.

Q. (By Mr. Scampini): What did you do or what was done after the first showing of gas became evident?

A. It was necessary to kill that gas in order to remove the drill pipe.

Q. What processes were followed to kill the gas?

A. The new mud was added and also weight material, baroid.

Q. After that was done, what followed, or what was the next thing?

A. By circulating their fluid we were able to get the well under control, so we felt safe to come out with the drill pipe.

Q. After the drill pipe came out, what did you do next? A. We made various tests.

Q. What tests were made?

A. We ran a schlumberger. We ran formation tests. We also ran a temperature test.

The Court: I notice the engineers pronounce that word properly. It is schlumberger, not schlumberger.

(Testimony of Byron B. Norris.)

Mr. Scampini: I show you here what appears to be a schlumberger and I ask you to look at it and state whether or not you recognize it and what it is?

A. This is a schlumberger of Cal-Bay Corporation, Pittsburg area, Faria [502] No. 1 Well.

Q. How many schlumbergers did you cause to be taken in this well?

A. Three schlumbergers.

Q. To what depth in toto?

A. The first one was 3,568, the second 4,277, and the third 4,374.

Q. What is the purpose of taking a schlumberger test?

A. The purpose of taking a schlumberger test is to make what we call an electric log of the well. That is based upon the resistance of the various formations to an electrode lowered in the well.

Q. What does the schlumberger reflect to you as a geologist and petroleum engineer?

A. Briefly, it indicates the formation to some extent where a comparison can be made with a known formation.

Q. After you ran the schlumberger, did you compare the schlumberger with the schlumbergers of other wells drilled in neighboring fields?

A. We did, that is, not right in that vicinity, but we could compare it, of course, with fields away. It was compared with the Keller well of the Standard when that well was drilled.

Q. Was it compared with any of the wells drilled at Rio Vista or the McDonald Island fields?

A. Yes.

(Testimony of Byron B. Norris.)

Q. Will you please state or indicate on the schlumberger the sand or formation from which the first showing of gas became evident?

A. Yes, I can. [503]

Q. At what depth does it show?

A. The first showing was at 4,268.

Q. (By Mr. Bourquin): Does the schlumberger show that?

A. It indicates a sandy formation at that depth.

Q. Does it show any gas? A. No.

Mr. Bourquin: I just want to keep that clear, your Honor.

Q. (By Mr. Scampini): Are there any indications in the schlumberger from which you can determine whether or not gas or oil is obtained in a formation reflected on the schlumberger?

A. Yes, there is, where you have a schlumberger that you can compare with known areas. That is based, of course, on the fact that oil is very highly resistant and salt water is very conductive. In the case of a wildcat well where you do not have anything to compare it with, it is a little bit more difficult.

Q. After you made the three schlumbergers, were you able to determine the formation from which the gas was coming? A. Yes.

Q. What was that formation?

A. I might say that that was a combination of methods. In the first cores we took and analyzed, we located the top of two well-known or the top of a well-known shale. I could hold that up to illus-

(Testimony of Byron B. Norris.)

trate it. You see this line here goes pretty steady? That is what we call the top of the Nortonville shale. Once we were in that [504] we had reason to believe we would tap the Domengine at no great distance. We were able to determine that point from the micropaleontologist, at this point also. Then, knowing we were in that formation, we were able to tell which formation it was producing from, because the reading the depth off here——

Q. (By Mr. Bourquin): Does the schlumberger reveal the formation you were in?

A. It reveals the character of the formation, yes, not the name of it.

Mr. Bourquin: In view of the fact that this is being employed, we have no objection to it going in evidence. It has already been employed, your Honor. I was waiting for him to offer it to clear it up.

Q. Are the notations on the schlumberger in red ink of the levels of the various beds—are those made by the Schlumberger people in their tests or were they added by you?

A. They were added by me on the data from the micro-paleontologist.

Q. (By Mr. Scampini): And the names of the formations which you have indicated on the schlumberger are the names which you have given, based upon the studies you have made of the cores of this well and after correlating the schlumberger with surrounding wells, is that right?

A. That is right.

(Testimony of Byron B. Norris.)

Mr. Scampini: I offer that schlumberger as our exhibit next in order, your Honor.

Mr. Bourquin: No objection, your Honor, with the understanding [505] as stated, that the red-lettered descriptive matter on there is not the schlumberger's report, but is what Mr. Norris has put on there to inform himself.

(The document in question was thereupon received in evidence and marked Defendant's Exhibit 28.)

Q. (By Mr. Scampini): I now show you a document, Mr. Norris, or a graph. I ask you to look at it and tell us what this graph represents.

A. That is a temperature survey of the Cal-Bay Corporation Faria No. 1 Well.

Q. Did you make that temperature survey or cause it to be made?

A. It was made by the Schlumberger people.

Q. Upon what principle does the temperature survey work?

A. The temperature survey works on the principle that as you go to depth in a well the temperature rises, generally on a gradual state. In this instance what we were trying to determine was the point of entry of gas. In other words, you can see this line goes pretty straight down to this point, and then at this point is the bottom of the gas entry, the theory being that as gas comes into a hole it will cool that hole and thereby cause this line to deviate from the normal direction.

(Testimony of Byron B. Norris.)

Q. After making the schlumberger and the temperature survey, what did you do in respect to testing the sands?

A. We caused some formation tests to be made.

Q. By whom?

A. The Johnston Formation Tester. [506]

Mr. Scampini: Before continuing, I offer in evidence as our exhibit next in order the temperature survey, if it please your Honor.

Mr. Bourquin: May I ask some questions concerning that before it is submitted?

Q. Is that the handiwork of the Schlumberger people or is that someone else's? Is anything imposed upon their report and data?

A. I am not sure whether that coloring was done by the Schlumberger people or not. It may have been or it may not have been. All the dark lines on there are——

Q. All the dark lines are the Schlumberger report?

A. Yes.

Q. Is the graphing off the dark lines and colored in—is that the Schlumberger report, or has that been imposed upon their report by some other person?

A. That I couldn't say. There were several conferences with them at that time. Whether they put that on there or whether it was put on by some engineer, I do not know. I didn't put it on there.

Mr. Bourquin: Until we have had an opportunity to understand the purpose of this, then, your Honor, I will ask that its entry in evidence be de-

(Testimony of Byron B. Norris.)

layed for want of foundation. I think when I have had an opportunity to see what it means I can withdraw any objection.

Mr. Scampini: I will ask that it be marked for identification, your Honor. [507]

(The document in question was thereupon marked Defendants' Exhibit 29 for Identification.)

Q. (By Mr. Scampini): Based upon your study of the schlumberger and the temperature survey, what conclusions did you draw with respect to testing the sands, Mr. Norris?

A. Did he raise an objection?

Mr. Bourquin: No, your Honor. I thought it was coming into the same matter that he answered to your Honor, but I will withdraw the objection.

The Witness: We determined the only way to test that would be to set casing.

Q. (By Mr. Scampini): Was casing set in this well? A. It was.

Q. To what depth? A. 4,343.

Mr. Bourquin: Your Honor, this is matter that has been gone into. It was put in evidence. There is no dispute about it. The casing was set. It has been detailed by at least one witness. Why take the time of this Court to set this casing again? I think we have set it twice before. I am going to object to going into this detail as repetitious, as matter already covered.

(Testimony of Byron B. Norris.)

The Court: I think it is repetitious, Mr. Scampini. Can't you get right at the question?

Q. (By Mr. Scampini): After the casing was set and Johnston Formation tests were made, did you study the results of the [508] Johnston Formation tests? A. Yes.

Q. What conclusions did you draw from them?

A. I drew the conclusion that we had a high pressure gas down there. That was based on the bottom-hole pressure as registered by the tests.

Q. Was any other conclusion drawn by you from the results of the Johnston formation tests, the schlumberger and the temperature survey?

A. Yes, I observed most of these tests and in my opinion, gas was produced in good quantity.

Q. I take it that that was some time in the fall of 1943, is that right? A. Yes.

Q. What happened after the tests of the Johnston formation people were made?

A. I believe it was October 27 we made the last tests. At that time the company shut down the operation for five or six months in order to raise more funds.

Mr. Bourquin: I think the company should testify to that, your Honor. I ask that that last go out as not responsive.

The Court: That may go out, "They shut down after the last test."

Q. (By Mr. Scampini): Based upon your study of this structure and the geology of that territory, did you form any opinion as to where you would

(Testimony of Byron B. Norris.)

normally expect to find the next productive sand below the sand known as the Domengine formation [509] in the Cal-Bay well?

A. Yes, I did.

Q. What is your opinion or conclusion in that respect?

A. My opinion in that respect was that the next sand we should contact would be what is known as the McDonald Island sand in the Martinez formation.

Q. At what approximate depth would you normally expect to find the McDonald Island Martinez formation in the Cal-Bay well, assuming a normal sequence of geological formations?

A. Well, that is quite an interval across there and there might be a considerable variance in that. I had estimated 500 feet below the depth of the old hole.

Q. What was the depth of the old hole?

A. I believe that was 4,375, something like that.

Q. In the meantime, had any developments taken place in this immediate vicinity in respect to discovery of new gas fields at or about this time?

A. Yes, above the Honker Bay——

Mr. Bourquin: Your Honor, I am going to object to this as irrelevant and immaterial.

The Court: Yes, I will sustain the objection. The witness can state what factors he took into account.

Q. (By Mr. Scampini): Did you form any opinion as to whether or not the Martinez sand, if

(Testimony of Byron B. Norris.)

encountered in the Cal-Bay well, would be productive of natural gas in commercial quantities, based upon your study of the situation and the geology of that structure? A. I did. [510]

Q. What factors did you take into consideration in forming that opinion?

A. I took into consideration the fact that the McDonald Island sand seemed to have considerable dispersal. It is found in the Rio Vista field and also in the McDonald Island field, which are just up the river from this location. After we tested the Domengine formation we found that to be somewhat impervious. It would not give up gas at the speed; it would up steady amounts, but not in sufficient quantities. So in drilling deeper, the objective I had was to contact a sand of sufficient porosity that it would give up gas, and I recommended that they drill and core until such sand was contacted, for the reason that I felt that the presence of high pressure gas of good quality had been demonstrated by the tests we had made, and that it would only be necessary to contact a good sand body to have large production.

Q. And of course the well was drilled ahead, is that right? A. It was.

Q. In the year 1944? A. Yes.

Q. Did you visit the well at any time during the period that it was drilling in 1944? A. I did.

Q. Did you examine the cores that were taken from the well during that period? A. Yes.

(Testimony of Byron B. Norris.)

Q. On or about November 27, 1944, do you know at what depth the drill or bit had penetrated?

A. I was not present [511] at the well at that time. I know from the record, yes.

Q. Have you checked the log in that respect?

A. I have.

Q. Do you know of your own knowledge since checking? A. Yes.

Q. What is the depth? A. 4,975.

Mr. Bourquin: May I ask this question, counsel: Did you say November 27?

Mr. Scampini: 1944.

Q. (By Mr. Bourquin): Wasn't the depth the same on November 25—wasn't that the date the pipe stuck?

Mr. Scampini: That is correct, Counsel, November 25.

Q. When did you next see the well with respect to the period of time between November 25, 1944, and, say, December 1, 1944?

A. To the best of my recollection, it was about the third or fourth of January I came up to complete the log. They were on a fishing job and abandoning the hole.

Q. Did you study the log of the drilling of this well during that period of time? A. Yes.

Q. What else did you do to ascertain what formation the well had penetrated at the depth of 4,795 feet?

A. We took some cores—I believe the last one was 4,823 to 4,843—and submitted them for analysis.

(Testimony of Byron B. Norris.)

The core we submitted from 4,823 to 4,843, which was the last one analyzed, did not have sufficient fossils to definitely identify it. However, Mr. Goodkuff, who is the micro-paleontologist we [512] submitted it to, noted that in appearance at least it apparently was maganus.

Mr. Mourquin: Is this witness going to testify to Mr. Goodkuff's findings or his own?

The Court: Yes, so that would be objectionable. Sustained.

Q. (By Mr. Scampini): Have you formed any opinion, based upon your studies and observation as to what formation the body of the hole of the Faria well was located on November 25, 1944?

A. I believe it had just topped the McDonald Island sand in the Martinez formation.

Q. Did you investigate the circumstances under which the blowout of the well occurred?

A. Yes, I was up here shortly after and I talked it over with the boys, yes.

Q. Have you formed any opinion, based upon your knowledge and experience and the studies that you made of the structure and in the course of drilling the well, as to whether or not the Faria well had penetrated a commercially productive sand of natural gas at 4,975? A. I have.

Q. What sand do you believe had been penetrated at this depth?

A. I believe that is the McDonald Island sand, what is known as that in this country.

(Testimony of Byron B. Norris.)

Q. Would you, with the knowledge that you possessed at the time and the information which was available to you, recommend that the well be completed at that depth and put on production?

Mr. Bourquin: I object to that as irrelevant and [513] immaterial, your Honor, whether he would recommend it or not.

The Court: That is objectionable. I sustain the objection.

Q. (By Mr. Scampini): Were any tests made of this formation, such as the schlumberger or the Johnston formation test?

A. No, it would be impossible to make any under the conditions.

Q. Why could not any of these tests have been made?

A. Well, the drill pipe was stuck in your casing. It would be impossible to reach the bottom of the hole to make any tests.

Q. What would have had to be done in order to make such a test or any of these tests?

A. What I would have done in that instance would have been to take some cores, which was exactly what they expected to do; in other words, a core of the formation, and possibly run an electric log and then determine the type of test we could give it, and probably set the casing.

Q. Before any cores could be made or taken or before any tests could be made, what would have to be done in the well?

(Testimony of Byron B. Norris.)

A. Well, either remove that drill pipe that is in there or else cut a new window and redrill to that depth.

Q. Now, a whipstock had already been set, of course, once before in this well, is that right? Have you formed any opinion as to what caused the pipe to be stuck in the well on November [514] 29 or 27 of 1944?

Mr. Bourquin: Is that a subject of expert testimony or is that a matter that, whatever its significance, is a question that the Jury may determine from the facts? The witness said he was not there much of this time.

The Court: Yes, I think the objection would be good to that, Mr. Scampini, unless you could state all of the factors upon which the witness might base an opinion.

Q. (By Mr. Scampini): Assuming, Mr. Norris, that the bit had penetrated the Martinez sand at 4,975 feet, and while the bit was being taken out of the hole, the drill pipe was coming out of the hole, it got stuck at about two stands from the bottom, and oil was spotted in the well for the purpose of loosening the pipe, namely, about eight barrels; circulation continued without interruption from the time the pipe got stuck, and immediately following or about eight hours following the spotting of the oil, and about eleven a.m. on November 29, the well blows out and continues to blow for a period of two hours mud, water, oil and gas, and then it is brought under control by the application of pressure to the

(Testimony of Byron B. Norris.)

gas control heads, and the building up of the weight of the mud to a weight of 115 pounds: based upon those facts, have you formed any opinion as to what caused or what could cause a casing to collapse at or about where the window had been set for the first whipstock? [515]

Mr. Bourquin: If your Honor please, I expected that question was going to be one directed to the witness's opinion as to whether they have found anything or not, but I still want to object to asking this witness's opinion as to what caused the casing to collapse on these grounds:

The Court: I do not think you need to go into any detail on that. I think the objection is good. It is purely a speculative field. It is something no one could give an expert opinion unless he was there and saw it done. It may have been one of the workmen mishandled the matter. I do not think that is the subject of expert testimony. The facts speak for themselves and that is a matter for the Jury to determine.

I thought also, Mr. Scampini, that you were pursuing in this question the matter of getting the opinion of the witness as to the nature of the sand or something of that sort.

Q. (By Mr. Scampini): In the course of drilling the Faria well, did you notice or observe whether or not the geological formations were found in normal sequence?

A. Yes, they were found in normal sequence.

(Testimony of Byron B. Norris.)

Q. Based upon your experience and the knowledge that you acquired in the course of drilling the well and your study of the structure, would you have recommended the setting of casing down to the 4,975 foot level and the testing of that stand? [516]

Mr. Bourquin: If he wants to know whether it was feasible, whether the circumstances warranted it——

The Court: The witness has already testified, Mr. Scampini, that is what he would have done. He would have made tests down there. He has already stated that in his opinion the bottom of the well was at that point in the sand he has described.

Q. (By Mr. Scampini): Did you have any opportunity, or was any opportunity given to you for the purpose of making an adequate test of the sand encountered at 4,975 feet? A. No.

Mr. Scampini: That will be all. You may take the witness.

The Court: Do you wish to take the recess at this time or cross-examine?

Mr. Bourquin: I would like to have the recess.

The Court: We will take the afternoon recess at this time, ladies and gentlemen. Please bear in mind the admonition I have given you.

(Recess.) [517]

Mr. Scampini: I desire to ask Mr. Norris one or two more questions, your Honor.

The Court: Very well.

(Testimony of Byron B. Norris.)

Q. (By Mr. Scampini): Mr. Norris, based upon your knowledge of this structure, the experience that you have had in the business, and in your profession, and the results encountered in the course of drilling the Faria well from the beginning down to November 29, 1944, and your general study of the whole situation, and the information acquired by you, have you formed any opinion as to whether or not a commercial discovery of natural gas was made in the Faria well on the property of Cal-Bay Corporation at the 4975 depth of the well?

A. Yes.

Q. What is your opinion?

A. My opinion is based on the work that was done over there several months before that.

Q. Please state what your opinion is in respect to whether or not a commercial discovery of natural gas was made.

A. Yes; I think a commercial discovery was made.

Q. What do you mean by "commercial discovery of natural gas?"

A. I mean gas in sufficient quantity to be salable at a profit.

Q. Upon what factors or considerations do you base your opinion or conclusion?

A. I based that opinion on the study of the well up to that time, and by that I mean we drilled and cored and tested the Domengine formation. In fact, we found high-pressure gas, bottom hole pressure of 2125 pounds, which is similar to gas producing

(Testimony of Byron B. Norris.)

fields in the neighborhood. We also tested that [518] gas and found it of good commercial quality, the methane content was 94.5 and the methane content of Rio Vista gas is 94.79, so that is just a fraction of one per cent difference.

So we get in the Domengine, which shows gas of good quality and pressure normal to the area. It was my belief then, and still is, that in drilling on down we would contact sands that were more porous and would give us gas in larger quantities. I felt that a closed structure had been demonstrated with the high pressure we found in the Domengine formation, everything pointed to that we would probably find this sand at approximately the depth at which we did find it. That is the reason I based my opinion that that is—that it is the McDonald Island sand. The pressure encountered, when you make a study of the heavy weight of mud used, that indicates to me that there was high pressure, and there must have been considerable volume. We had some experience in that line on other places. We had a high pressure and a steady continuous pressure, but not sufficient in volume to raise that weight of mud that was raised in the last blow-out. In my experience any well that would blow out with 110-pound mud has a volume down below such pressure.

Q. Have you formed any opinion as to the volume of gas that would be produced by the Faria well were it completed in the Martinez sand located at 4975 feet?

(Testimony of Byron B. Norris.)

A. No, I cannot say I have, because without an actual test it could not be demonstrated. [519] The blow-out, itself, is indicative, that is the only indicator we have of the volume.

Q. Have you any knowledge as to what the volume or capacity or production of wells drilled on McDonald Island and bottomed in the Martinez sand, is? A. This may vary——

Mr. Bourquin: We object to that as immaterial and irrelevant, and presupposes something.

The Court: I will sustain the objection. If the witness took some factors of that kind into account in forming an opinion as to how much volume could be produced here he may so testify.

Q. (By Mr. Scampini): In arriving at your opinion to the effect that commercial discovery of natural gas was made in the Faria well at 4975 feet, did you take into consideration the productive capacity of wells drilled on McDonald Island and bottomed in the Martinez sand?

A. Yes, I did, not only McDonald Island but also Rio Vista. Both areas. In other words, I felt then that we had correlated them to a point; in other words, that now we have contacted one producing sand in that area. That is my belief.

Q. Have you any knowledge as to productive capacity of some of the wells drilled on McDonald Island and bottomed in the Martinez sand?

A. Yes.

Q. What is the productive capacity of some of those wells with respect to which you have knowledge? [520]

(Testimony of Byron B. Norris.)

Mr. Bourquin: I object to that as immaterial and irrelevant, and speculative.

The Court: Sustain the objection.

Mr. Scampini: You may take the witness.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Norris, you testified, did you, that before you became a consulting geologist you had been connected with the Corporation Commission of the State of California?

A. Yes, that is right.

Q. And you had offices at Los Angeles with that Commission? A. Yes.

Q. At which time there was an interval of, I think you said, from 1931 to 1935?

A. Yes, that's right.

Q. It was your position there to receive and pass upon reports supporting applications for permission to sell securities in projecting explorations?

A. Yes, that's right.

Q. In this case you, personally, made the report to support each successful application of the Cal-Bay Corporation for permission to issue and sell stock, did you not?

A. Yes, that's right.

Q. Now, in connection, for a minute, with those reports, you testified on direct examination that when you went into this field for a week at one time and two days at another you explored the Faria property and you explored property quite some

(Testimony of Byron B. Norris.)

distance removed to the southeast, you said the Kellar property. [521]

A. That is correct.

Q. When you made your report to the Cal-Bay Corporation for the purpose of supporting this application to first issue and sell stock, didn't you report in that report that the project under study consisted of 603.72 acres of land?

A. Yes, I did. The report concerned only the Cal-Bay property. That survey I made at that time was for Mr. Faria to determine the proper location.

Q. In other words, when you rendered your report upon a study of the property only that was embraced in the Faria ownership, or under the Cal-Bay lease, did you not?

A. I believe I have some mention of the Kellar property and over as far as the Kirker Pass, to my recollection.

Q. Did you report upon 603.72 acres?

A. That concerns the Cal-Bay property, itself, yes.

Q. You believed you had some reference in there to the fact that this property was on a common structure with the Kellar property, is that true?

A. Yes. It is the same general anticline.

Q. Well, did you ever report that it was on a common structure with the Kellar property?

A. I believe I did.

Q. You have the knowledge that Standard Oil had sunk a well——

A. Yes.

(Testimony of Byron B. Norris.)

Q. It did afterwards sink a well?

A. Standard Oil Company Kellar No. 1 well.

Q. Would you be good enough so we could see this proposition——

A. The Kellar well is right on that map there.

Q. What I wanted you to do, this is the map that you had——

A. Yes.

Q. This is the defendants' exhibit——

A. The Contra Costa County Map.

Q. Map of Contra Costa County. Have you outlined on this map the properties contained in this case of this company?

A. Yes. It is contained in this heavy line.

Q. The property contained in this heavy line. Let's see if we can make that a little heavier now. Is it correct? Will you tell me, please, Mr. Norris, coming off through here I have drawn that above your line; is that correct?

A. Yes, I believe it is.

Q. That will present an irregular shape of the property as I have outlined it on this diagram?

A. Yes.

Q. While we are at the map, with reference to that structure that you have described here, you said you indicated the dips on it, have you?

A. Yes.

Q. Show me where you have made your indications on the map of those dips that you found?

A. All this (indicating).

Q. Let me mark those by the degrees that I see here, with an arrow mark. What is that?

(Testimony of Byron B. Norris.)

A. That is 25 degrees.

Q. 25 degrees and an arrow pointing north, is it?

A. Yes.

Q. That is one. That is in—I can't find the section here.

A. That is section 36. [523]

Q. I have it in here. You have also placed another arrow here with the figure 30 representing 30 degrees?

A. Yes.

Q. That is indicative of your dip there?

A. Yes.

Q. To the northeast?

A. Yes.

Q. The third one with an arrow and it says 20 for 20 degrees?

A. Yes.

Q. Also dip, indicating a dip to the northeast?

A. Yes.

Q. We come then to one with an arrow marked 30, 30 degrees, also a dip to the northeast?

A. Yes.

Q. I am moving northwest on the map. I have been moving northwest?

A. Yes.

Q. So we come to another arrow, 25 degrees, as we proceed northwest, and I have an arrow indicating a dip to the northeast.

A. Yes.

Q. A further arrow up here in the property marked Avila property with the arrow likewise indicating dip of 25 degrees northeast?

A. Yes.

Q. And the last one proceeding northwest on the map, an arrow in the Neustater property, with a notation 25 degrees indicating the dip to the northeast?

A. Yes.

Q. Let's go to the other side.

A. Just a minute.

(Testimony of Byron B. Norris.)

Q. To one in the Cal-Bay Corporation property that is marked Faria 80, with an arrow pointing approximately due north indicating a dip 25 degrees.

A. 25 degrees.

Q. By the way, this line that you are pointing at here marked [524] "anticline," was that a feature that was represented on this State map that you employed here? A. No.

Q. That is something that you have imposed upon the map, yourself?

A. Yes. All the geological data I put on, myself.

Q. You put on the lines, you put on the arrows that I indicated the dip indicated? A. Yes.

Q. The line you marked "anticline," you mean to represent what? A. The apex.

Q. The apex or the roof? A. Yes.

Q. What about the other side? Where do you indicate the dips on the other side?

A. This (indicating).

Q. Is this an arrow, here?

A. No. That is an arrow showing in this direction (indicating). That is commonly used to indicate an anticline.

Q. That is meant to give character to the whole anticline line? A. Yes.

Q. Let's outline that one in a circle so we won't mistake that. Show us where from your study you indicated a dip on this south side of your anticline line.

A. Here is one, here is one, here is one.

Q. Here is one at the most southeastern extent, the more southeastern length of the anticline line

(Testimony of Byron B. Norris.)

and south of it a large arrow pointing southwest 25 degrees. That was your observation or your conclusion? A. Yes. [525]

Q. And I will proceed again along the line northwesterly, and I come to the next arrow indicating you found there a dip to the southwest, arrow standing at 25 degrees, is that right? A. Yes.

Q. What section is that in?

A. That is in section 34, it would be.

Q. 34. Then as I proceed along the northwesterly parallel to the anticline line you have your next arrow pointing southwest, indicating you found the dip to the southwest marked 25 degrees; is that correct? A. Correct.

Q. What section is that in?

A. That would be in section 21.

Q. Section 21. Let us say that that indicates a line just southeast of the character arrow that we placed in the circle. A. Yes.

Q. Did you find any further indication of a dip?

A. I don't believe I did, because it would clutter up the map and, of course, any dips over here would simply make a blur on the map if I put them on.

Q. But these do represent the places where from your study on the property and all your studies you came to the geological conclusion that there were drips at a point in the direction or the degree you represent. A. Yes.

Q. While we are on the subject of that map, Mr. Norris, these colors are a little bit, they might be a little bit confusing to some. Suppose we turn back here. The colorings as you [526] have them on this

(Testimony of Byron B. Norris.)

map and then when—this is the map of Contra Costa County, the defendants' exhibit, those are the coloring in geographical areas moving from the river to Pittsburg southeast? A. Yes.

Q. The yellow at the top you said indicates that the property in that area exposed, what did you call it, stratas?

A. Terrace deposit. You will find them on the right.

Q. That matter was a matter of your study or was a matter on the map?

A. That is taken right off the State geological map for the area here.

Q. That is terrace deposits, silt from the river and so forth?

A. Yes. Well, no, it is more or less ground that is washed down from the higher hills. This is a very high range of hills.

Q. The next one, you said the red one represented what? A. Miocene.

Q. That extends over a ground area that you have shown here? A. Yes.

Q. I notice that some of it corners into the northeast quarter of the Alvarnez property contained in—— A. Yes.

Q. The extent you have shaded in red. Then you come to the yellow, it is yellow on the map, you said that represented what?

A. The upper eocene.

Q. That runs on the map right through the Faria and Cal-Bay Corporation? A. Yes.

Q. Then you come down to a darker one, here,

(Testimony of Byron B. Norris.)

it might be rusty [527] yellow, this one. That represents what?

A. That is valley fill. It is in this area here.

Q. Here you have shown what are the particular formations or strata or beds that are exposed on the surface of the ground?

A. That is right.

Q. In other words, going around in this area, a person on this property would encounter first your yellow, next your red, next your yellow brown, next your yellow rust color, and so on.

A. Well, yes, you would to this extent, you start in with formations you would expect to contact; in other words, you start with eocene, you will go down through cretaceous. If you start at miocene you go through miocene into eocene and on down to the depth of your well.

Q. You start in with red and you would expect to find the other formations which are here shown below on the map?

A. Yes, stratigraphically, they are.

Q. Stratigraphically. They range that way in age on there.

A. Right. [528]

Q. You said something, Mr. Norris, about sealing off by faults. Have you shown that data on the maps, sealing off of this structure by faults?

A. Well, perhaps only so far as I show this anticline coming up against this fault, this red line being the fault.

Q. The red line you have indicated on the diagram and you have marked the fault?

A. Yes.

(Testimony of Byron B. Norris.)

Q. That is a line which runs across the Blume and the Williams, Jr., property and the McKeon property, and lie out west of your line?

A. That is right.

Q. In other words, what does that mean, that the supposed structure is there walled in by that fault? Is that what you mean?

A. At this point it is. Where this anticline comes up against it, this fault is almost a vertical fault. By that I mean it is almost straight up and down.

Q. Does it cross in the place you have shown it on the map?

A. It crosses, yes. It is very plainly road cut at about this point here on the Willow Pass Road.

Q. How is it on the rest of it as you have imposed it on the map where you have marked "fault?"

A. For the most part it is buried.

Q. Were you able to determine that it was in existence?

A. Yes, you can.

Q. In other words, do you mean that to say that along that line the supposed structure, to the north-east of it, is [529] walled off from the property southwest of that line? Is that what you mean to show?

A. No, that is not quite the right story. This being a fold here would need no wall in this particular part. In other words, you could have a fold over like this. The point of contact, where it comes up against the fault, is the place of seal.

Q. Let me get at that. From your study you have indicated to us that you came to the conclu-

(Testimony of Byron B. Norris.)

sion that there was a structure in the ground at this place which could be explored with an expectation of production? A. That is right.

Q. Can you outline to us on that diagram the limits of that structure, the surface limits of that structure?

A. I do not know as I could presume to do that at this time. I can outline, however, what I anticipated and what I stated in my report that from Bailey Road over to Willow Pass Road I believe that whole anticline will be productive. The extent to the right and left will be determined by development. It is a little premature to tell how big it will be at this time.

Q. Do you mean to say the only thing we can be certain of is the area lying immediately beneath your anticline?

A. No, I do not say that. I say that would be the top of that fold, and it was reasonable to assume that it will be productive in that vicinity. That is, that is the top of your structure. [530]

Q. From your analysis and study and your exploration, what did you conclude to be the limits of it here on top that would reach that structure?

A. I don't know as I follow you. On this end it is determined by the fault.

Q. (By Mr. Scampini): What end?

A. On the west end.

Q. (By Mr. Bourquin): It is determined by this fault that runs northeast and southwest?

A. Yes, sir, that is the determining boundary

(Testimony of Byron B. Norris.)

there. That fault is a wide fault, taking in most of this property here. Then you expect the area to be productive at least along the axis of this anticline.

Q. That would be a limited thing along that line?

A. I do not know. Several fields in California are several miles wide on a similar anticline.

Q. That is what we want, your opinion as a geologist. You are here expressing your conclusion as an opinion, is that right, Mr. Norris?

A. I think I get your idea. To the north and south of this anticline this walk would determine the southern boundary of any productive structure. In this direction it dips off in a regular degree out under the Bay. So in my opinion it would extend quite a distance in this direction.

Q. Let us take one side at a time. We can safely say, then, the limits of the supposed structure would be the fault line that you have drawn on the map running generally northeast [531] and southwest and lying to the southwest—no, running generally northwest and southeast and lying generally southwest of the anticline? A. Yes.

Q. If we could just fence it in there. What will we have to measure the limits to the north? Let us get the limits.

A. That can only be determined by development. The dip in that direction is normal, about twenty-five degrees, so you would expect—so far as I know.

(Testimony of Byron B. Norris.)

there is no physical limitation by reason of a fault or any break in this area.

Q. You are going to the opposite side of the anticline, but I want to get the northwesterly limit. Did you say it was at this point you have indicated on the fault? A. Yes.

Q. It is along the line here that the word "Percy" or "Perez" is?

A. Along the line of this Willow Pass Road.

Q. Let us mark it in so we can see it. Just below the Willow Pass Road. Have you a red crayon?

A. I have one.

Q. This is next to the Willow Pass Road. That would determine its northwesterly limit. Is that correct? A. Yes, I believe that is right.

Q. That is your opinion. Now, then, how about the southeasterly limits?

A. I believe that the Bailey Pass fault here, this red line, would be the southeasterly limits.

Q. The Bailey Pass fault, and you have drawn that in already, haven't you? A. Yes.

Q. And you have marked it "Fault" along the line? A. Yes. [532]

Q. That would be in your opinion the southeasterly limit, would it? A. Yes.

Q. So that we have got the limits on three sides. Now, what have we to indicate the closing limit on the fourth side, on the northeasterly side?

A. I do not believe you have any physical barrier there that would indicate it. Frankly, there is a possibility that this area and the Suisun Bay area

(Testimony of Byron B. Norris.)

may be all one gas field across here. The distance between Suisun and this is less than the distance across Rio Vista.

Q. You mean from here over to Suisun across the river the country is free from folds and faults, is that true?

A. So far as I know. It is under the river there, a lot of it, and masked by surface fill, but there is nothing to indicate that—and the development of Honker Bay and Suisun Bay indicates that it dips off in that direction at a fairly regular rate to me.

Q. Let me ask you, is there any data as to the absence of faults between your anticline line here and the northeast to the river?

A. Not that I know of.

Q. In other words, are we left in this position: You do not know of any fault in there and you have nothing upon which to come to a conclusion that there was no fault there?

A. Well, I have this, because I covered this area in field work. I discovered no fault there. [533]

Q. Is the country to the northeast here as it descends the hills and approaches the river, is it filled with alluvium deposit?

A. This area here marked in yellow is generally pretty rugged hills, through this area.

Q. Generally rugged hills without deposit?

A. Yes.

Q. What do we know about the structure when you get to the water line?

(Testimony of Byron B. Norris.)

A. To be frank, when an area is masked like that, you cannot know a great deal about it as far as faults are concerned. I was not able to discover anywhere, and so far as I know, nothing is published that indicates one there.

Q. Did you pursue your studies over here past the town of Nichols and into the little towns along the railroad in search of formations or geological indications?

A. Yes, I did. I had that in mind, to see if there was any possible break through there in order to determine the drainage area from that side.

Q. And you found no closure for this here, is that correct?

A. Why, certainly there is a closure. You have your normal dips in this direction coming up here—in other words, the flank of an anticline.

Q. What I am trying to gather from you, Mr. Norris, is have you any data upon which to say how far any supposed structure in this area would extend to the northeast, any data of any kind or character, yours or anybody else's that has been published as a result of examinations or analyses?

A. I do not know of any, no.

Q. While you are at the map we will cover these little incidents and get out of the way. Within the limits in this instance you put here on the map we would find on the southwest side of the anticline it would include the Faria property, some of the Williams property, it would include some of the Blume property, it would include John Faria's property, will it not?

(Testimony of Byron B. Norris.)

A. I wouldn't agree with that, because this fault, while it is shown as a line, is quite wide. It represents the edge of the hills here.

Q. Why did you put it over here if it belongs over there?

Q. Because that is where I believe the main fault is. That may not be just a line. It may be a half mile wide of broken area.

Q. Are you also in doubt about its northwesterly extent here? A. Not at all.

Q. So we can put John Faria in on the structure, can't we? A. No, sir.

Q. Is this John Faria's property (indicating)?

A. Yes.

Q. That is John Faria's property. He lies within the limits you have drawn. Do you want to draw them differently?

A. No, but in coming to this conclusion about that property I would not recommend any beyond about this point here for drilling, because this is all broken.

Q. Put your line in where you would not recommend any further. [535]

A. I will put in across here (indicating).

Q. Can you put it in heavier, please?

A. In other words, I do not believe you should go out of this that is indicated as eocone there, for the reason that there is faulting beyond that.

Q. Let us mark that line you have just introduced for the record in its northerly extent as N-1. It will not include all of John Faria's property. It

(Testimony of Byron B. Norris.)

will only include some of it, is that true? Or do you want to shut him out altogether?

A. I would not recommend the property, no.

Q. You said that is as far as you recommend it. Do you want to put your line in again?

A. No.

Q. You leave it out?

A. In other words, you can't draw a fine line and say the fault stops right here.

Q. We have asked you to draw it where in your opinion it does stop. Have you done that or do you want to do it again?

A. Well, I think——

Mr. Scampini: I do not hear you, Mr. Norris.

The Witness: I think that is perhaps a fair estimate of where the main faulting would take place. As a matter of fact, it may extend clear back to here.

Q. (By Mr. Scampini): Where is "here" on the map?

A. The west edge.

Q. (By Mr. Bourquin): Mary Faria and the Cal Bay property?

A. Approximately there (indicating). [536]

Q. Any possibility it would get over to this side?

A. That is exactly why I put the location right here, to be back enough from this fault so there would not be any chance of getting into it.

Q. (By Mr. Scampini): By location I assume you mean the location of the well, is that right?

A. Yes.

Mr. Bourquin: Take the stand again, will you, Mr. Norris?

(Testimony of Byron B. Norris.)

Q. You said that you were in pretty regular attendance at the well—and by the way, is that a wildecat?

A. It was when it started, yes. I do not think it is now.

Q. You were in pretty regular attendance at the well in 1943, is that true?

A. Yes, I was subject to call. That was after I got out of the Army.

Q. Did you come there regularly in 1943?

A. I was there quite a little bit, yes.

Q. How frequently?

A. Oh, I would say at least once a month, sometimes twice, and I would stay a week, maybe, at a time. It was during the times when I needed to be present.

Q. How much did you attend in 1944 when the exploration was resumed?

A. I was there for some time.

Q. Did you attend as regularly and as frequently as you did in 1943?

A. I don't believe I was there as much time in 1944 as I was in 1943, no. They were shut down a portion of that year.

Q. You were not at the well at the time of the blowout, were [537] you? A. No, sir.

Q. How long before that had you been at the well?

A. I don't recall exactly. It was during the drilling operation there, after they started up again.

(Testimony of Byron B. Norris.)

Q. Do you know how long before the 29th of November you had been at the well, 1944?

A. I don't believe I have any way of accurately determining that. If I recall right, they started up in July, I believe, and it was some time after that.

Q. How many times were you at the well in 1944 before the blowout?

A. I couldn't say offhand, but I would say about two or three times.

Q. Do you know when it was, how long before the blowout? Was it a month, two months, or what?

A. Yes, it was quite a little time?

Q. About a month?

A. I think it was longer than that. What they did was to drill down to 4,811, and then they had a fishing job and they had to come back and redrill. It wasn't necessary for me to be there during the redrilling period.

Q. You did not go back after the fishing job, the time they fished and cut the window?

A. No.

Q. You did not go back to the well again until when?

A. Until I was called up there after the blowout.

Q. In January? A. Yes. [538]

Q. Of 1945, and that cutting of the window transpired from October 8 to October 15. Were you there during that procedure? A. No.

Q. You were not there after that?

A. No.

Q. Until January 1945?

(Testimony of Byron B. Norris.)

A. You see, that was a redrill hole there and there was no occasion much to call me.

Q. So what was done and transpired after that until the blowout you had gathered from the log. I suppose, from what people told you?

A. I was in touch with the company and they were sending me cores to examine.

Q. By the way, who examined those cores?

A. Mr. Goodkuff examined some and Mr. Rankin others.

Q. Who examined the cores in 1943?

A. Mr. Glen C. Ferguson at Bakersfield.

Q. All of them?

A. All of the micro-paleontology work that was done in 1943, yes.

Q. Did he report on them? A. Yes.

Q. In writing?

A. Well, I don't know whether he reported to the company or not. I got my reports oral from him.

Q. Where? A. At Bakersfield.

Q. You got your reports from him at Bakersfield orally?

A. Yes. I would stop at his office and go over the reports and mark my schlumberger.

Q. You do not know that he ever made any written report?

A. I believe he did, yes. They were not furnished to me, though. [539] I was just interested in locating the top of these various formations.

Q. Did you ever look at any of his written reports? A. I think so, yes.

(Testimony of Byron B. Norris.)

Q. They have written reports on that?

A. I presume so.

Q. There were written reports by Mr. Ferguson. I gather from what you said that you assumed what was the character of the operations after the window was milled until the blowout from what information you could gather? A. Yes, I have.

Q. You have assumed what was the quality of the mud fluid; you did not see it, did you?

A. Not at that time, no.

Q. You also assumed, did you, that circulation was not interrupted after the pipe stuck on November 25 until the blowout, did you?

A. Well, I will say this: I came up in January and made up this log, and I went through all the records at that time and also talked with the drilling superintendent and those working on the well. That is the basis of my information at that time.

Q. In the question that was put to you, I want to ask you in giving your opinion, did you assume that the circulation was not interrupted from the time that pipe stuck on the 25th until the blowout?

A. I think it was testified, and I remember their telling me that they had some trouble with the pump. That would be an interruption of circulation for only a temporary period. [540]

Q. Were you here yesterday when young Mr. Mohr testified? A. Yes.

Q. Did you hear him testify—

A. I did.

Q. —that over the period of the days before

(Testimony of Byron B. Norris.)

the 29th the absence of viscosity records indicated to him that the mud was not in circulation?

Mr. Scampini: If it please the Court, I do not remember any such testimony. My recollection is the opposite: circulation was continuous during that period of time, according to Mr. Mohr's testimony.

Mr. Bourquin: If there is any debate about it, we have a record. I will withdraw the question, your Honor.

Q. In voicing your opinion that there was beneath this ground or in this ground gas in commercial volume, what do you base it on?

A. Well, I base it on the statements I just made here, that the development of the well—in other words, at that point it had ceased to be a wildcat, and we know what formations—we knew what we normally could expect.

Q. Tell us what you based it on, what facts, that we may judge of it?

A. I based it on—we had drilled this well down and tested through the Domengine formation. We had developed gas of high pressure, of similar pressure to neighboring fields.

Q. That is one factor, that you had tested and found that there [541] was gas in what you termed the Domengine formation?

A. Yes.

Q. When was that?

A. That was in 1944, October.

Q. 1943. That is one factor. Go on further. What other factors?

(Testimony of Byron B. Norris.)

A. We made an analysis of that gas and found it checked very closely with the production in this area.

Q. By found you mean that it was——

A. The methane content was almost identical with Rio Vista.

Q. It was a good quality gas? A. Yes.

Q. That is No. 2. What other factors?

A. All right. Then based on the geological data we have and the presence of the McDonald Island sand in at least two producing areas, I believe it would be fair to assume that we had contacted it in this area. We drilled ahead with that objective, and so far as we know we had reached it.

Q. You then embraced the fact, or let us assume you embraced the fact as No. 3 that you had contacted what you term the McDonald Island sand. In what formation did you call it?

A. In the Martinez.

Q. In the Martinez formation. That is No. 3?

A. Yes.

Q. Any more?

A. Yes, the fact that that well would blow out with that weight of mud in, which I understood was 110 pounds that day, indicates to me there was a very heavy pressure accompanied by a considerable volume of gas.

Q. No. 4 is the blowout taken in connection with the weight [542] of the mud? A. Yes.

Q. As it is recorded on the log?

A. Yes, that is right.

(Testimony of Byron B. Norris.)

Q. That is No. 4. Is there any other factor upon which your opinion depends? A. I think not.

Q. That is all. Now, would you hold to the same opinion if you were not at that time in the sands which you say you believed you were in, namely, the Martinez sands of the McDonald Island variety? A. Yes.

Q. Would you still be of the same opinion?

A. If I definitely knew I wasn't in that sand? I don't quite understand.

Q. If the fact were you were not in such a structure, in such a bed, would you still be of the same opinion that you had a gas there in commercial quantity?

A. I would be from the standpoint of the pressures shown, yes. I do not quite follow that line of questioning.

Q. Assume you were in some other formation and not the Martinez you have talked about: Would you still be of the opinion that the hole had discovered or exposed gas in commercial quantity?

A. Well, by some other formation—the point of my discussion was we were in a known formation. I can't quite agree that I would expect so much in some formation that I did not know anything about, no.

Q. Does your opinion depend upon the fact that you were in the Martinez stratas?

A. Not necessarily, no. [543]

Q. Not necessarily?

A. If by chance we were in the top of the cre-

(Testimony of Byron B. Norris.)

taceous, it might be, there are known producing zones in that. In other words, if it was in well-known producing zones in this area, you have more reason to believe that that would produce than just taking any zone.

Q. Would you be of the same opinion that there was gas in commercial quantity if in fact you were in the cretaceous zone or bed?

A. Yes, I think I would.

Q. To the same extent, let us say, of volume?

A. Yes.

Q. You would hold to the same opinion there. Do you attach any importance to this blowout in coming to your conclusion or opinion that you had commercial quantity? A. Yes.

Q. Did you run up against an impending blow-out in 1943? A. We did.

Q. What level?

A. That gas was contacted at 4,268 at that time.

Q. And you ran up against an impending blow-out then and went to work on it, did you?

A. Yes, it was necessary to circulate for several days to kill that gas so we could take the drill pipe out.

Q. And after several days circulation you were able to control it and avert the blowout, is that true?

A. Yes, it mudds off the gas sand by continuing circulation, so the gas does not come through so strong.

(Testimony of Byron B. Norris.)

Q. Yes. In other words, circulation is an important factor [544] in maintaining the pressure, isn't it?

A. Yes, it has to maintain the pressure. The continuing circulation, however, was a safety factor to mud that wall off so the gas did not come through.

Q. It was an important factor, circulation was, in maintaining a proper consistency, so that gas would not come through that mud, wasn't it?

A. That is right.

Q. It would be a foolhardy thing to abandon circulation in the face of high pressure, would it not be?

A. It certainly would.

Q. And you say you circulated for several days and were able to avert it in 1943?

A. That is right.

Q. That was about 4,268. What was the place in 1943 that you found the gas that was tested by the Johnston people in?

A. We ran several Johnston tests. It was roughly, however, the same zone, the Domengine zone, about 4,268 on down.

Q. Were you present when those Johnston tests were made?

A. I think I was present at all but one of them.

Q. Can you tell us what one that was that you did not attend?

A. The next to the last one, the first perforation of the casing. I did get there shortly after the test.

Q. Were you there at the last test made by Johnston in 1943?

A. I was.

(Testimony of Byron B. Norris.)

Q. That was the test of October 27?

A. Yes.

Q. Were you here when Mr. Johnston testified the other day? [545]

A. I was.

Q. Can you tell us who were the two young geologists that he referred to, that he said were on the property and took a hand in the test? Were you one of them?

A. No.

Q. Do you know who they were?

A. I am not positive just who he was referring to. There were representatives from practically every oil or gas company around, particularly the Standard, Amerado and P. G. and E. I was at a loss to know just who he was referring to, myself.

Q. It sounded like somebody who took a part in the thing?

A. Yes.

Q. You do not know whom he referred to?

A. I rather think it was the Marada boys, but I am not positive.

Q. You were there?

A. Yes, I was.

Q. Did you take a part in it?

A. Yes, I observed the test.

Q. What was the result of the test?

A. We got a considerable blow and we got a bottom hole pressure of 2125 pounds.

Q. What was the result of the test in whether a commercial deposit had been found, or not?

A. 125,000 cubic feet of gas was estimated. In some areas that might be considered commercial, but it was not for that type of well. I took it up with the Petroleum Administrator for War at that

(Testimony of Byron B. Norris.)

time and they seemed to think that if you could get a plant in close it might be used, but they wanted to go deeper.

Q. Who wanted to go deeper?

A. The company.

Q. Let us see what you said in your report on that matter on November 1, 1943, the Cal Bay matter. Have you that before you? A. Yes.

Q. On page 2 I will read the part that refers to that test:

“Of course, it was known that gas was entering this hole because it was breaking through at the surface. Then 7-inch O.D. 23-pound casing was cemented at 4343 with 150 sacks of cement to give a shut-off test for the State Division of Oil and Gas. Four 3/9th inch holes were shot at 4250 to 4251. This test demonstrated a water shut-off.”

Q. What did that mean?

A. That is the test the State requires to demonstrate that water has been excluded from the producing formation.

Q. I will continue:

“Then the casing was perforated from 4269 to 4281 with 22 3/8-inch holes. This test was made with the Johnston formation tester on 3-inch drill pipe. The test showed an estimated 100,000 cubic feet of gas. There was no water with the gas. Later the casing was perforated at from 4281 to 4289 with 9 half-inch holes. The formation test of all perforations from 4269 to 4289 showed an estimated

(Testimony of Byron B. Norris.)

flow of 125,000 cubic feet of gas. This test indicated that the zone was high-pressure gas but the volume was not large due probably to the low permeability of the sand. The Schlumberger survey also indicated the possibility of the low permeability of the sand. There was no water with the gas."

Have I read your report?

A. Yes, that is correct.

Q. That is the way you reported on the matter?

A. Yes.

Q. In other words, at that time you were of the opinion that the volume of gas was not large there due probably to the low permeability of the sand, is that correct? A. Yes.

Q. In that same report you recommended after the suspension of operations that further drilling be done in the hope that something might be encountered, did you not? A. Yes, sir.

Q. You recommended that they use up the balance of the drill [548] pipe that they had on the property, didn't you?

A. Not necessarily, no.

Q. Let me read the conclusion of your report.

Mr. Scampini: If it please the Court, the report is in writing.

Mr. Bourquin: I am going to read it.

Mr. Scampini: It should be submitted to the witness and read in its entirety and not merely extracts from certain portions.

Q. (By Mr. Bourquin): Have you a copy of your report, Mr. Norris? A. I have.

(Testimony of Byron B. Norris.)

Q. Will you read the concluding paragraph, the recommendation:

“There are 6000 feet of 3-inch drill pipe at the rig now. In the writer’s opinion it would be well to prepare to drill another 2000 feet if necessary in order to test any possible producing formations that may be encountered in the balance of the eocene formations and in the top of the cretaceous formations. It is possible that a commercial gas sand may be encountered at any future depth. There is not sufficient data available to definitely tie down the thickness of the various formations to be encountered, so the writer recommends a test of all light formations encountered in the next 2000 feet of this hole.”

Q. That is correct, is it? A. Yes. [549]

Q. That was your recommendation at the time. You thought then at that time that it was possible that if drilling was continued producing formations might be encountered in the balance of the eocene or even in the cretaceous, did you? A. Yes.

Q. And possibly a commercial sand might be encountered at some future depth, is that correct?

A. Yes, that is right.

Q. You did not prognosticate in that report at any point you had reason to expect a commercial sand, did you?

A. You mean the actual depth in which we would hit one?

(Testimony of Byron B. Norris.)

Q. Yes, just as you did here on direct examination. A. No, I did not.

Q. You did not there in that report prognosticate any particular place, at any particular depth, as being more likely than any other, did you?

A. I mentioned that the balance of the eocene and the top of the cretaceous should be contacted. I do not think, frankly, that I had all that information on November 1, 1943, that I have now, or had even a short time after that. The cores were being examined from time to time.

Q. You had the information on the core and the temperature analysis that had been made on the way down, though, in 1943, at that time, didn't you? A. Yes.

Q. That is all embraced on page 2 of this very report that I read, isn't it?

A. Yes, that is right.

Q. What information was it, then, that you did not have when you prepared the report on November 1st that enables you now [550] to say that looking down from where you were in 1943 you could say at what level it was most likely you were going to find something?

A. You mean the information I have now?

Q. What information did you have then?

A. I had the information that I have set forth in here. I do think this, however; perhaps all the cores and all the analyses had not been done. You see, this well was shut down, if I recall right, October 28th, and this is dated November 1st.

(Testimony of Byron B. Norris.)

Mr. Scampini: 1943?

The Witness: 1943. In other words, this report was to state the conditions at that time, and what I thought would be a fair future program. That area was new to us. We got quite a little more information from time to time, and I rather imagine——

Q. You were pretty new in that area at that time, yourself, weren't you? A. Yes.

Q. At the time that you filed your report with the corporation commissioner applying for leave for this company for this company to issue and sell stock, you were under the impression that the Rio Vista beds and the McDonald Island beds were producing from the cretaceous zone, were you not?

A. That is right.

Q. That is correct, isn't it?

A. At that time I was not able to discover from any published data otherwise.

Q. So you assumed that to be the case, and you so stated that [551] in your report, didn't you?

A. I did.

Q. And you were a hundred per cent mistaken in that, weren't you? A. Yes.

Q. Yes.

A. I corrected it in a later report here, though.

Q. You corrected it after the stock permit was given and stock was sold, didn't you?

A. I corrected it when I got reports and data on those fields at Rio Vista, Tracy, so forth. [551-a]

Q. When did you first correct it, so we will know?

(Testimony of Byron B. Norris.)

A. I made a record on August 18, 1944.

Q. August 18, 1944. How much stock, to your knowledge, was sold by that company from April 20, 1942, when you projected it, until August 18, 1944?

Mr. Scampini: I object to that as incompetent, irrelevant, and immaterial. The issuance of the stock is not material.

Mr. Bourquin: It may not be material there, but I bet it is material to the stockholders. Well, I will withdraw the question.

Mr. Scampini: I move to strike out the statement of counsel, because if anything is material to the stockholders it would be the verdict of the jury. I will ask the jury be instructed not to pay any attention to such remarks of counsel.

Mr. Bourquin: Mr. Norris——

The Court: Of course, the comments of counsel are not permissible in evidence. The jury will not take them into account. You can't take one statement or another. You asked me to have the jury disregard a statement of Mr. Bourquin, and you made a statement that is equally subject to the same criticism. So I will just tell the jury not to pay any attention to either lawyer. That is, on this particular matter.

Q. (By Mr. Bourquin): Mr. Norris, what beds or formations if you know where gas, a commercial gas is found in the Rio Vista and McDonald Island fields?

A. It is found in upper [552] eocene. Yes, it is my contention the Domengine formation is the

(Testimony of Byron B. Norris.)

upper zone at Rio Vista. They have found McDonald Island sand there, and at McDonald Island the McDonald Island sand is the only productive zone.

Q. What bed is that in?

A. That is Martinez—

Q. What age is that?

A. Some geologists call it paleocene, a small age of formation between eocene and miocene.

Q. Paleocene? A. Yes.

Q. Which is older?

A. Between eocene and crustaceous. Not miocene. Miocene is above all this.

Q. You said between eocene and miocene.

A. Well, I am sorry. Yes, between eocene and crustaceous. I have a recent publication on Rio Vista. I can get that section.

Q. No, I want to clear up this matter so we have no mistake. As you said, when you first recommended the matter for development you were under the mistaken assumption, and your report so showed, that Rio Vista and McDonald Island were producing in the crustaceous age.

A. Yes, and I believed that, and as a matter of fact Tracy is still producing from the—

Q. I asked in regard to McDonald Island and Rio Vista, not Tracy.

A. Yes. I don't offer any excuse for it at all. In other words, I would have recommended the property for a crustaceous producing well as far as that is concerned.

(Testimony of Byron B. Norris.)

Q. On your direct examination here today you testified to the fact you encountered these gases and high pressure at 4268, and [553] had made that the basis that you found gas of commercial quantity and you estimated that there would be gas deposits about 500 feet deeper? A. Yes.

Q. That is the term you used. You stated you were of that opinion at the time when the well had been drilled to a depth of 4375 feet? A. Yes.

Q. When you reported the matter to Cal-Bay for the purpose of its stock transaction——

Mr. Scampini: I move to strike out the question on the ground there is no evidence that the report was made for any purpose involving any stock transaction. It was given as a report or recommendation as to future progress in connection with the drilling. I object to the question as assuming something not in evidence.

The Court: I think the witness already testified that he knew that the report was used for filing with the Corporation Commission in connection with the application.

The Witness: That's right, your Honor.

Mr. Scampini: That is not the purpose. It may have been used but that is not its purpose. Its purpose is to advise the Cal-Bay Corporation what to do with respect to the well. It is a recommendation as to future development.

Mr. Bourquin: Well, that is not Mr. Norris' testimony, and it is not the way I think the record stands.

The Court: Proceed. [554]

(Testimony of Byron B. Norris.)

Q. (By Mr. Bourquin): When you compiled your report of November 1st, 1943, you did not say anything about holding any reason to believe that gas in quantity would be encountered 500 feet deeper, did you? A. I believe not.

Q. When you compiled that report you said that it would be well to drive another 2000 feet with the amount of the drill pipe you had in the hope that possible producing formations might be encountered anywhere in the balance of the eocene or top of the crustaceous? A. Yes.

Mr. Scampini: I object to that question on the ground the word "hoped" does not appear in the report. The entire report should be read to the witness if he is going to ask him——

Mr. Bourquin: He has the report.

Mr. Scampini: Then I object to insertion into the record of any words which do not appear on here.

Mr. Bourquin: Let me read it to you: "It is possible that a commercial gas sand may be encountered at any future depth." That was your representation, wasn't it?

A. Yes.

Q. Not 500 feet, not 600 feet, but any future depth; is that correct?

A. Yes, that's right.

Q. At that time you reported that there was not sufficient data available to see down, indicating to estimate the thicknesses of the various formations to be encountered, didn't you? A. Yes.

(Testimony of Byron B. Norris.)

The Court: Mr. Bourquin, you have more cross-examination? [555]

Mr. Bourquin: Yes, I will, your Honor.

The Court: Well, I think we have reached the adjournment hour. Ladies and gentlemen, we will reconvene again tomorrow morning at ten o'clock. Please bear in mind the admonition I have heretofore given you that it is your duty not to talk about the case or form an opinion until it is finally submitted to you.

(An adjournment was taken until tomorrow, Thursday, January 30, 1947, at 10:00 o'clock a.m.) [555-a]

Thursday, January 30, 1947

10:00 o'Clock A.M.

The Clerk: United States of America vs. Certain Land in Contra Costa County.

Mr. Bourquin: Ready, your Honor.

Mr. Scampini: Ready.

Were you through with Mr. Norris, Mr. Bourquin?

Mr. Bourquin: No.

BYRON B. NORRIS

recalled.

Cross-Examination

(Resumed)

By Mr. Bourquin:

Q. To clear up what I note in reading the record reference to the types of structures as you de-

(Testimony of Byron B. Norris.)

picted them in color on the Contra Costa County map, and to know what relation they had to our problem, you say that red structure second from the top, you said that was miocene; is that right?

A. Yes, that's right.

Q. That is a structure which you found to exist in this area, on this property, I mean, but to the north and east of this property?

A. You mentioned "structure." That is actually the formation that was present there, the surface formation.

Q. You have given it its right name?

A. A miocene formation or formation miocene A.

Q. That formation exists not on this property, but on land north and east of this property?

A. By "this property," you [556] mean the Cal-Bay property?

Q. Yes.

A. I believe there is a portion of that that overlaps onto Cal-Bay property.

Q. You are quite right. I see it corners, as we spoke yesterday, that miocene formation you found laps into the Cal-Bay property up on a small corner which is shown here.

A. Yes.

Q. But the bulk of it, as you show on this map, is a large area which overlays or exists in the countryside there to the north and east.

A. That's right.

Q. You made a reference yesterday in pointing that out to the fact that that is the kind of forma-

(Testimony of Byron B. Norris.)

tion that exists in Kettleman Hills. I notice that in the record. A. Yes.

Q. Should we assume, therefore, that all of the land owners to the north and east of this location, to the extent of the red shown there, are existing over an oil structure like Kettleman Hills?

A. They are not by any means, no.

Q. They are not. Yesterday you enumerated four factors on which you drew a conclusion, or from which you drew a conclusion that there was a productive quantity of gas in the subject property?

A. Yes.

Q. Without reciting them again will you tell me the factors that were encountered in the exploration in 1944 that were not also encountered in the exploration in 1943?

A. Just a second, I will refer to the log. At the conclusion of operations in 1943 they had reached the depth of 4398 feet, and [557] then——

Q. Let me have that figure again.

A. To 4398 feet.

Q. 4398 feet. Thank you.

A. Then when drilling was resumed in 1944 they continued drilling and coring ahead to a depth of 4811 feet. At that depth they got into a fishing job.

The Court: I think you misunderstood counsel's question. I don't want to interrupt, but all he wanted to know is what factors were present on which you based your conclusion in the 1944 exploration that were not present in the 1943 exploration.

(Testimony of Byron B. Norris.)

A. Your Honor, I was just laying a foundation for the work that was done in 1944 to show what I could base it on.

The Court: Well, I don't know whether that is what counsel wishes.

Q. (By Mr. Bourquin): If it is necessary I will recite the four factors to him that he gave us yesterday which he says are the basis of the opinion. I can do it from the record. Do you know what they are?

A. Yes, you can read them.

Q. Well, you know what they are, don't you?

A. Yes.

Q. If they support your opinion?

A. Yes.

Q. Without taking the time of the court and the jury, tell us what they are, what was not present in 1943.

A. Well, as I stated, there was more hole drilled and more evidence obtained. Of course, 1943—you stop there presumably about eight or nine hundred feet short of—Well, it wouldn't be quite that much; [558] the difference between that would be to 4975.

Q. All right. You say there was more hole—without debating as to whether or not that was one of your four factors, what other factors did you encounter in 1944 that were not encountered in 1943?

A. We encountered this gas pressure down at 4900.

Q. Had you encountered any gas at any time in 1943?

A. Yes.

(Testimony of Byron B. Norris.)

Q. What other factors can you name that you encountered in 1944 that were not present in 1943?

A. Well, if I would be permitted to give some of these core analyses, we did that. In other words, anything that was done between those depths certainly adds to the information.

Q. Suppose I read the four factors to you and see if we can stay in the same ground as we did yesterday. Page 541. This is an answer to the question: "Tell us what you based it on, what facts, that we judge of it?"

A. I based it on—we had drilled this well down and tested through the Domengine formation. We had developed a gas of high pressure, of similar pressure to neighboring fields.

"Q. That is one factor.

"A. We made an analysis of that gas and found it checked very closely with the production in this area."

I said to you:

"That is No. 2." Then, "What other factors?"

You said:

"All right. Then based on the geological data we [559] have and the presence of the McDonald Island sand in at least two producing areas, I believe it would be fair to assume that we had contacted it in this area. We drilled ahead with that objective, and so far as we know we had reached it." That was said. I said: "That is No. 3."

(Testimony of Byron B. Norris.)

Then you were asked: "What other factor?" and you answered:

"The fact that that well would blow out with that weight of mud in, which I understood was 110 pounds that day, indicates to me there was a very heavy pressure accompanied by a considerable volume of gas."

That is the blow-out.

I said to you:

"That is No. 4." And I asked you, "Is there any other factor upon which your opinion depends?" and your answer was: "I think not."

Let us review those factors. First, you said, No. 1, to go back, "We had drilled this well down and tested through the Domengine formation. We had developed a gas of high pressure, of similar pressure to neighboring fields."

Now, did the exploration in 1943 encounter gas of high pressure? A. Yes.

Q. That was present in 1943. Your reference to similar pressure in neighboring fields, then we will pass that for the moment. No. 2 was, "We made an analysis of that gas and found it checked very closely with the production in this area." That was the analysis testified to by the young man from the [560] Dow Laboratory, here?

A. Mr. Obrecht, yes.

(Testimony of Byron B. Norris.)

“Q. That was encountered about March in 1943? A. That’s right.

“Q. In other words, Mr. Obrecht made his tests in 1943, that is correct; true?

“A. Yes.

“Q. And there was no test of the gas, such tests made in 1944 at all?

“A. It was not possible to make such test.

“Q. Let me get No. 3. On No. 3 you said, ‘Then based on the geological data we have and the presence of the McDonald Island sand in at least two producing areas, I believe it would be fair to assume that we had contacted it in this area.’ ”

Was the third one on the sand correct?

A. Yes.

Q. Now, on the question of the sand, examine the log and tell me where in the log it shows the sand that you and my friend, Mr. Scampini were talking about at the figure 4973; that is the footage he used repeatedly.

A. The log of 11/25/44 in the morning tour reads: “Depth 4951 to 4975. Sand and shale.” That is a typical driller’s log.

Q. That is November 25, 1944? A. Yes.

Q. There the drillers report their observations that they had cut to the stream and observed sand and shale; is that the way——

A. Well, it is not spoken of that way.

Q. Well, how does it read?

A. It means——

(Testimony of Byron B. Norris.)

Q. No. Please read just what it says.

A. It says, "Sand and shale," but if I may explain that——

Q. No, no. We want the drillers, if anyone, to explain that. [561] You were not there, were you?

A. No.

Q. All right. I am only suggesting to the witness, you might sit if you would be more comfortable, Mr. Norris. Now, you weren't present there that day, November 25, 1944?

A. No, I was not present.

Q. You therefore did not see the sand and shale, did you? A. No.

Q. While we are on the subject, did you ever see the sand and shale that came up from that hole November 25, or afterward?

A. No, I have not.

Q. You never have seen it?

A. I might explain that that would be caught on the shaker.

Q. I am testing your opinion. We will let the record ride.

A. Well, if I may explain, I am not bound by a driller's log, at all. The driller, he testified here that he ran into it and he pulled out.

Q. Are you basing your opinion, then, on what the driller testified to here?

A. That is normal——

Q. Please answer the question. Are you basing your opinion on what the driller testified to here?

A. Yes, as far as that particular item is concerned.

(Testimony of Byron B. Norris.)

Q. Which driller are you referring to?

A. The drilling superintendent, Mr. May.

Q. Mr. May. You have taken Mr. May's testimony relating to the subject matter and made that one of the four factors, the [562] basis of your opinion, have you? A. No.

Q. Well, have you any other information about the sand?

A. We have the information that that sand had gas to cause a blow-out.

Q. We will come to the blow-out. For this entry of sand and shale, let's go back in the record and see how highly significant that should be, that sand and shale. Look at the log for November 24th and see what is reported at higher depths in that connection.

A. November 24, 1944, the morning tour 4892 to 4898 feet.

Q. Wait a minute. That is about 75, that is 50 to 75 feet higher than on the 25th.

A. Yes; a little over that.

Q. On the morning tour the driller reported sand at that—— A. Yes.

Q. Just read it.

A. "4892 to 4898 sand, 6 feet of sand."

Q. How about the day shift?

A. 4898 feet to 4903 shale. 4903 to 4907 sand.

Q. In those four feet they reported sand?

A. Yes. 4907 to 4908 shale.

Q. Shale. A. At 4908 to 4930 sand.

(Testimony of Byron B. Norris.)

Q. What about the third shift that day?

A. 4930 to 4938 shale with thin streaks of sand. 4938 to 4951, sandy shale.

Q. Let me review that with you. The day of November 24th, the day before this depth that you gentlemen have been referring to, the morning shift from 4892 feet to 4989 feet sand. Correct?

A. Correct.

Q. That would reflect with allowances for the drillers' observations 6 feet of sand?

A. That's right.

Q. On the day shift 4898 to 4903, the next tour.

A. Yes.

Q. 4903 to 4907, that makes four feet of sand?

A. Yes.

Q. For the next one a depth of 4907 to 4908, shale.

A. Yes.

Q. For the next 4908 to 4930, sand; is that correct?

A. Yes.

Q. On the third shift, 4930 to 4938, noticed this thin streaking of sand.

A. True.

Q. 4938 to 4951 shale.

A. Correct.

Q. It was spotty sand, isn't it?

A. That is what we call the streaks of sand and shale.

Q. That is what the drillers term it. Let's take a good hop back in the log to October. Let's pick up one here on October 18th when they were at, where they started to drill in 1944, October 18, at 4391 feet.

A. All right, I have it.

(Testimony of Byron B. Norris.)

Q. What do you find in that connection at the depth of 4391? I will say this, that is seven feet short of the bottom of the 1943 hole; I think you said the bottom of the 1943 hole was 4398?

A. Yes.

Q. Let's go into that date. What do the drillers report on the first shift there?

A. 4391 to 4414 gas and shale.

Q. 4391 to 4414 gas and shale, just like November 25, 1944? A. Yes.

Q. Go on down to your log of October 20th at 4603 feet. What do they report?

A. 4603 to 4608 sand and shale. [564]

Q. 4603 to 4608 sand and shale. Let's go to the log for October 21st and get deeper, 4671.

A. 4724 sand and shale.

Q. That's about 50 feet of sand and shale, 4671 to 4724. A. Yes, a little over.

Q. Let's take an other depth, go over a—jump 100 feet, go over to October 28, 4877, and see what you get.

A. October 28, 4788 to 4815, no record of that.

Q. What about the day shift?

A. The day shift, 4815 to 4821, sand.

Q. Now, sir, these depths that I just called to your attention are depths reached before the hole got into trouble, weren't they? A. Yes.

Q. In other words, the depths that we have read from October 18 to October 28, there, are depths before this condition took place in the hole that you say was impossible to make tests afterwards, is that correct?

(Testimony of Byron B. Norris.)

A. I understand that the drill pipe was stuck in it; made it impossible to make any tests in the hole.

Q. To clarify our record, the record of sand, and sand and shale that we have read from the log beginning on October 18th to October 28th, where sand, and sand and shale was encountered before the condition in the hole that made it afterward impossible to test? A. Yes.

Q. Were any tests made during that interval?

A. You mean formation tests, or anything else?

Q. Any tests made to determine the merits of those sands or sand [565] and shales?

A. No.

Q. None?

A. If I might explain, it is like drilling a hole of his old hole so there wouldn't normally be any reason to do that.

Q. Now, we started the review of sand and shale at higher depths, there are sands and shales above the bottom of the old hole?

A. Yes, that is right.

Q. We have been in the new hole and the new depth ever since October 18, 1943. A. Yes.

Q. At no time did anyone there feel the situation was such to stop and test the merits of those sands and shales?

A. That's right; no sands were encountered that was deemed worthy of a test.

Q. Although in your recommendation made to them, upon which they resumed their drilling in 1944, you voiced the opinion that productive forma-

(Testimony of Byron B. Norris.)

tions might be encountered in the balance of the eocene formation or crustaceous, and possibly a commercial sand should be encountered at any future depth? A. That's right.

Q. So you recommended then in your report and based upon all of likely formations encountered in the next 2000 feet of the hole—meaning commencement of operations in 1944.

A. Yes, that's right.

Q. Let's go to the fourth factor. The fourth factor you said was the blow-out. You told us yesterday that you had been confronted with your blow-out in 1943.

A. Yes, they had a [566] potential one but they handled it.

Q. They encountered a condition developing a blow-out and after four or five days' work they were able to avoid it? A. Correct.

Q. Had their efforts not been successful it would have culminated in the completion of the blow-out?

A. Probably would, yes.

Q. Probably would. On this subject of pressure, do you take pressure to be a demonstration of commercial volume of gas?

A. Yes; that is one of the items that is always considered.

Q. That is an item that is considered. Would a high-pressure standing alone prove a commercial volume of gas?

A. Well, it is a question of whether high pressure would stand alone. It takes something to create it.

(Testimony of Byron B. Norris.)

Q. Have you in your experience encountered high pressure before that blow-out where no commercial quantities were found?

A. I don't think I have, no.

Q. Never have. Have you ever before taken any part in an exploration for oil or gas in Northern California?

A. I have up as far as Coalinga.

Q. Have you ever before taken any part in any exploration in, let's get north of Coalinga, in California?

A. With the exception of this hole, I have not.

Q. This is the only? A. Yes. [567]

Q. What would it indicate to you that after the blow-out, and when the gas was killed, the hole was opened, circulation was established and continued?

A. Well, it would indicate to me that they did a pretty good job of shutting off that blowout. I think that has been discussed here at great length, and, frankly, it is my opinion that the crew did an excellent job there.

Q. Would it indicate anything to you with reference to your supposed volume of gas at the bottom of that hole?

A. I do not believe it would have any bearing, because in killing the well they put new heavy mud in there for the purpose of mudding off that gas. In other words, when you control a well you put a heavy weight material down there and it would tend to keep that gas down. I do not think there would be any indicator given by that.

(Testimony of Byron B. Norris.)

Q. In other words, you mean they increased their mud, I think, five or six pounds there in weight, didn't they? A. Yes.

Q. And then there was no further blowout or blowout disturbance, is that correct? A. Yes.

Q. That would not indicate to you by any chance that the puff, wherever it had come from, had been exhausted and was not there any more, would it? A. No.

Q. It would not indicate——

A. That has never been the case in that hole in 1943 or 1944. The gas kept coming [568] continuously.

Q. On that subject—you referred to it yesterday and perhaps I did, too, in my examination of you—the gas encountered in 1943, that was estimated on one test at 100,000 cubic feet per day and on the last test before it was shut down, on October 27, at 125,000 cubic feet a day, is that correct?

A. That is right.

Q. How far can those estimates of the rate of flow be taken in this quantities to indicate the volume?

A. The formation test opens those formations to the air or to the atmosphere, and it allows the gas to come up and blow out the pipe. Those are based upon the amount of flow of gas from the well head.

Q. The estimate is the estimate of the flow which, had it continued for 24 hours, would yield 100,000 cubic feet or 125,000 cubic feet?

(Testimony of Byron B. Norris.)

A. Yes, that is customary to measure it in thousand cubic feet per day.

Q. None of these tests were opened for 24 hours, were they? A. No.

Q. Do you know what the P. G. & E. was paying and what gas would sell for at the well head in that locality at that time? A. Yes.

Q. How much? A. Ten cents.

Q. Ten cents what?

A. Ten cents per thousand cubic feet.

Q. I do not want to debate trivia with you, but are you sure it was not nine cents that they were paying at Rio Vista?

A. I base that on—we had several representatives from the [569] P. G. and E. there.

Q. Let us take the ten.

A. My recollection is that is what they offered. They were interested in putting a pipe line to the well if we could get some gas there.

Q. How much would a well yielding 100,000 cubic feet a day, if we assume that it would, pay a day at that rate? A. \$10.00.

Q. And at 125,000 would pay what?

A. \$12.50.

Q. By the way, on this subject, what was your estimate of the cost of drilling that well to 5,000 feet that you projected for the representation to the Corporation Commission?

A. That is in the original report you referred to?

Q. Yes, Mr. Norris.

A. To 5,000 feet I estimated a cost of \$50,000.

(Testimony of Byron B. Norris.)

Q. May I ask you how long it would take to pay the cost of drilling the well on a yield of \$10.00 a day? Well, it would be 5,000 days, wouldn't it?

Mr. Scampini: I object to the question as hypothetical and speculative, because it is assuming something not in evidence.

Mr. Bourquin: Five thousand is very definite.

Mr. Scampini: If it please the Court, it is assuming something not in evidence, because we had discovered natural gas in the Martinez sand in **this well, and that would have to be put in production before you determined the total aggregate [570] volume coming out.**

The Court: Counsel is not asking that. He is asking at the time of the 1943 showing how long would it take at that rate?

Mr. Scampini: If the well had been completed or put in production in the Domengine sand discovered in 1943, but he would have to take into consideration the discovery made in 1944.

The Court: Now you are arguing the case, Counsel.

Mr. Scampini: Pardon me.

The Court: I think Counsel is examining the witness to find out if there was any difference in 1944 from 1943, which is a perfectly legitimate field of cross-examination. He has a right to go into that.

Mr. Scampini: I will defer to your Honor's ruling.

Q. (By Mr. Bourquin): That would be about five thousand days, wouldn't it, Mr. Norris?

A. Yes.

(Testimony of Byron B. Norris.)

Q. About thirteen to fourteen years, is that correct? A. That is right.

Q. Let us assume that a well drilled to 5,000 feet cost \$242,000; it would mean that at a yield of \$10.00 a day it would take 24,200 days to pay the cost of drilling the well and exposing the gas, wouldn't it?

Mr. Scampini: I make the same objection to that question, your Honor, for the purpose of the [571] record.

The Court: I will overrule the objection, the objection, although it obviously calls for a mathematical calculation.

Mr. Bourquin: I am asking if the calculation is right.

Q. It is 24,200 days?

A. May I answer that?

Q. I am asking you if that is correct, if my mathematics are not correct? Please tell me.

A. Yes, your mathematics are correct, but you mentioned 5,000 feet, and if you do that you must take in this zone we tapped at 4,900.

Q. I thought we had covered that this morning.

A. I do not want to be arguing with you.

Q. You can go back to that with your counsel. In other words, 24,200 days would be approximately 60 plus years to return the cost of developing the well; that is correct, isn't it?

A. I can not agree with you, because you are basing that on 5,000 feet.

(Testimony of Byron B. Norris.)

Q. I am asking you to take \$10.00 a day yield.

Mr. Scampini: If the Court please, it is asking for purely a mathematical calculation.

The Court: That is true. I guess the Jury can calculate that, too.

Mr. Scampini: And it is argumentative.

Q. (By Mr. Bourquin: In your assumption that there was a commercial gas deposit here, what did you assume to be the life of it?

A. I do not believe I assumed the life of it. Probably it would be a good many years, [572] however.

Q. How many would that be?

A. Well, I would say thirty or forty years, possibly. Most of our gas fields in California are fairly young and we have no data of any great length to estimate it on.

Q. You mean you would suppose it would be thirty or forty years because you have no experience yet to test by? Is that it?

A. We have the experience of a few years, yes.

Q. How many wells were drilled in the Tracy field commencing in 1935?

A. You mean up to when?

Q. Up to now. How many wells did that Amerada Company drill in that Tracy field?

A. I can't give you that figure offhand, but I have the state bulletin—on the Tracy field? I believe there are only four wells in the Tracy field.

Q. They drilled seven commencing with the first in 1935, did they not?

(Testimony of Byron B. Norris.)

A. I can check that in just a minute. Well, quoting from State Bulletin 118, this map shows only, I believe, five wells up to 1943. I am not familiar with just how many have been drilled since then. That is, there are five producers.

Q. Is that the only information that you have about the Tracy development, the state bulletin you are referring us to?

A. No, it is not the only information, but I think it is authoratative information.

Q. Have you been in that field?

A. Yes, I have been through that field. [573]

Q. You have had the opportunity to observe how many wells were brought into production?

A. Yes, you can observe them there.

Q. Don't you know that commencing in 1935 the Amerada Company has drilled seven wells in the Tracy field, and that today all but two have been exhausted and abandoned?

A. I did not know that.

Q. What did you assume to be the volume of this assumed gas deposit in coming to your conclusion that there was a commercial discovery there?

A. I could not make any assumption. We did not have a chance to make a test.

Q. You do not have any idea whether it is great or small, is that it?

A. Well, based upon the pressures, and assuming a porous sand, I would say it would be between ten and twenty million probably. Those factors—I do not want to be pulled into something where we

(Testimony of Byron B. Norris.)

do not have sufficient factors to base it on. In this case you have the pressure and the fact that there must have been some volume there to force that mud out.

Q. We have covered the subject of pressure. Let us to go this porous sand. Did you make any test of this sand to test the porosity of it?

A. No, no cores were taken of that sand.

Q. What is the porosity of the sand?

A. It is the pore space between the grains of sand.

Q. Is that the same as permeability?

A. No. [574]

Q. You used those terms interchangeably yesterday. I wondered. What is permeability?

A. Permeability would be the property of the sand to transmit any fluid or gas. In other words, there may be silt or other material in the spaces that would make it a little tighter.

Q. Permeability is the travel base in the sands to permit the gas to come through, isn't it?

A. Yes, that is right.

Q. That was the condition that you assumed and reported in 1943 was the defect in the sands encountered on the tests made by the Johnston people, wasn't it?

A. That is right.

Q. That is, that there were sands, but they were not of sufficient permeability to transmit any commercial volume of gas?

A. That is right. I base that on the fact that the gas flow was very steady there, but not of large volume, but it just kept coming.

(Testimony of Byron B. Norris.)

Q. In 1944 you did not make any tests of the sand at the places where you say you believed the discovery was made?

A. No, the drill pipe was stuck. It would be impossible to do it.

Q. So you are assuming that there was sufficient permeability there, are you?

A. Based upon the evidence, yes.

Q. Based upon what evidence.

A. The evidence of the blowout.

Q. Based back again on the blowout. Anything else?

A. Yes.

Q. What else?

A. On the fact that I expected to contact a [575] producing zone at about that depth.

Q. When did you come to that expectation, if we have to go back to that again?

A. Well, I do not know whether I am permitted to use my core records——

Mr. Scampini: Sure you are.

Q. (By Mr. Bourquin): All we want is the date or about when, or even the year. When did you come to the expectation that there was a development to be expected at any certain depth?

A. I had come to that conclusion when I wrote that report.

Q. Which report? The 1943 report after the shut down?

A. Yes.

Q. Let me read that to you again. Have you it before you?

A. That is what date that you refer to?

(Testimony of Byron B. Norris.)

Q. I want to get the report you are talking about. I was assuming it was the report you made on the shutdown in 1943.

A. I made several reports in 1943. On September 4——

The Court: Can't you hurry along? You are talking about the report you previously asked the witness about, are you not?

Mr. Bourquin: Yes. He said he thought it might be encountered at any depth in a further exploration of 2,000 feet. I think that is in evidence.

Q. Mr. Norris, is there any other factor but the blowout from which you have assumed that there was a commercial quantity of gas.

A. Yes, there is. I would like to call your [576] attention to some core analyses that were done here.

Q. Can you tell us what they were?

A. Yes. We submitted cores to Dr. Goudkoff and in his analysis, at 4,823 to 4,843, he placed it at meganus, which would be just above the Martinez. That gives us a point to estimate where we would probably strike it. In other words, we had what we call control of the situation as far as the geological section is concerned.

Q. In other words, you say there is another factor in the fact that a Micro—what do you call those fellows?

A. Micro-paleontologists.

(Testimony of Byron B. Norris.)

Q. —the micro-paleontologists found on the core examination at 4,823 that you were then approaching what?

A. He listed it as meganus, which would be just above the Martinez.

Q. In other words, he told you there you were just above the Martinez, is that correct?

A. Yes.

Q. And then you assumed from that, that when you got down another 100 feet you were in Martinez, is that correct?

A. Yes, or approximately those formations.

Q. Isn't it right, as we said this morning, whether it is Martinez, Martini, or paleocene, or anything else, it is not a question of the bed, it is a question of whether it happens to contain a gas deposit, isn't it?

A. That is right.

Q. Look at your report again for 1943, the shut-down, the last page, and let me ask you if you did not report then and was [577] not the report then made to the corporation that at the present time—being the depth of the 1943 hole—based on the analysis of the micro-paleontologist, the well is now drilling in martinez shale? Didn't you so report?

A. I did.

Q. My goodness, you fellows will be translating these beds up and down forever at that rate.

Mr. Scampini: I move to strike out the remarks of Counsel.

Mr. Bourquin: I withdraw the remark, your Honor.

(Testimony of Byron B. Norris.)

The Witness: I would like an opportunity to explain that.

Mr. Scampini: If it please the Court, I think he is entitled to explain.

The Court: What was the last question?

(Question and answer read).

The Court: Do you want to explain that answer?

The Witness: A. Yes, I would like to, your Honor. At that time, based upon our work with Ferguson, we did think that was right, but later cores and analyses contradicted that, and I am inclined to agree with Goudkoff on the matter. In other words, the core analysis I mentioned at 4,823 to 4,843 was analyzed as meganus, which would be above the martinez.

Q. (By Mr. Bourquin): In other words you mean the fellows you had make these tests did not agree themselves, is that it?

A. No, I would not say that. They were separate cores that [579] they analyzed.

Q. One fellow said one thing and another fellow said something else?

A. Sometimes that happened, yes.

Q. Did it happen in this case?

A. Not on the same cores, no.

Q. Did it happen that one fellow gave you a determination of when you reached a particular bed as at one time, and the other fellow gave you the same information at a particular different time at another depth entirely?

(Testimony of Byron B. Norris.)

A. That is not entirely correct. Goudkoff did not give us the top of the martinez, but by analyzing the geological column, if it was meganus, it must still be above it.

Q. Let me put it this way to sum it up: Ferguson told you that your drilling in 1943 was in the meganus shale and Goudkoff came along in 1944, and told you that even down at 4,844 you were not there yet, isn't that correct?

A. That is the substance of it, yes.

Q. They are both in the same field, micro-paleontology?

A. Yes.

Q. Both experts?

A. Yes, sir.

Q. Isn't that a pretty speculative basis to assume a commercial deposit of gas on?

A. No it is not.

Mr. Scampini: If the Court please, we object to the question as entirely argumentative.

The Court: I will overrule the objection. On the opinion [579] testimony, cross-examination is allowed within reasonable limits.

Mr. Scampini: If the Court please, I think the witness ought to be allowed an opportunity to answer the question.

The Court: You were objecting while Counsel was asking the question and the witness' answer came in at the same time. You might read the question and answer, Mr. Reporter.

(Question and answer read).

Q. (By Mr. Bourquin): Mr. Norris, have you any interest in this venture?

A. I have none.

(Testimony of Byron B. Norris.)

Q. You do not own any stock?

A. No. In order to represent this corporation before the Corporation Department of the State, it is necessary to be a disinterested party.

Q. Have you any agreement or interest in the outcome of, say this litigation? A. No.

Q. None whatever. In other words, you have no agreement with the Cal Bay people, the Faria's, or any other, to be paid on the basis of the outcome of this suit?

A. No.

Q. Let me ask you this last question: Yesterday when you outlined for us the land overlying this supposed gas structure that I made heavier on here, or attempted to, are we to assume from that that a well drilled anyplace on the land overlying would reach the supposed deposit?

A. Not necessarily. That is the extreme limits of the possible structure. It would be good practice to drill at the top of the structure as near [580] as possible.

Q. May we assume that this supposed deposit could be reached at other places besides this particular point where the well went down?

A. Yes, that is very probable, it could.

Q. Other places upon the lands of the Cal Bay people? A. Yes.

Q. Other places upon the lands of Mary Faria?

A. Yes.

Q. Other places upon the lands of the Alvernaz'.

A. Yes.

Mr. Bourquin: I think that is all, sir.

(Testimony of Byron B. Norris.)

Mr. Scampini: Shall I proceed now?

The Court: I think I shall excuse the Jury for a few moments. I have a criminal case to dispose of. The Jury may be excused for the usual morning recess at this time. Please bear in mind the admonition of the Court. The Court will remain in session. The Jury may be excused.

(Recess) [581]

The Court: You may proceed.

Mr. Scampini: Are you through, Mr. Bourquin?

Mr. Bourquin: Yes.

Redirect Examination

Mr. Scampini: At this time, may it please the court, I offer in evidence the report of November 1, 1943, addressed by Byron Norris, being the supplemental report to Cal Bay Corporation from which extracts have been read by counsel on his cross-examination, and I ask it be marked as our exhibit next in order.

The Court: Any objection.

Mr. Bourquin: No objection.

(The document was marked Defendants' Exhibit 30.)

[Defendants' Exhibit No. 30 appears on Pages 1257 to 1261.]

Q. (By Mr. Scampini): Are you familiar with the approximate size of the structure existing on the McDonald Island gas field across the river in the northeasterly direction from the Cal Bay Corporation?

Mr. Bourquin: Is this redirect examination,

(Testimony of Byron B. Norris.)

your Honor? It may be preliminary.

Mr. Scampini: It is in respect to counsel's questions as to the size of the structure which Mr. Norris was asked to give his opinion on.

Mr. Bourquin: All right.

Q. (By Mr. Scampini): I am now referring to the gas field on McDonald Island which is found on Defendants' Exhibit No. 11 [582] at the location indicated here, stated above the "McDonald Island." A. Yes.

Q. How many acres, approximately, are located on that structure? A. About 1500 acres.

Q. How many acres would you say and in your opinion are located, favorably located on the structure outlined by you in respect to the Cal Bay properties and Joseph Faria properties? Will you please again indicate the outlines of the anticline that you have noted on the map, and I will withdraw my first question, your Honor.

The Court: I thought you just asked him how much was included.

Mr. Scampini: I withdraw that question.

Q. Do you, or have you any opinion as to the total acreage embraced within the effective boundary of the anticline located by you on Cal Bay and Joseph Faria properties?

A. Yes. The effective limits in the anticline is about $2\frac{1}{2}$ miles, this being a section here; it is about $2\frac{1}{2}$ miles in length. The width on the side would be approximately the edge of the orange-colored part of the map, that is, the southern limit would be the edge of the orange-colored part and

(Testimony of Byron B. Norris.)

the western limit is where the anticline contacts the fault in section——

Q. That is 20.

The Witness: It is 21 here. I guess that would be section 20. Yes. [583]

The Court: How many acres, you have already outlined that in great detail; he wanted to know how much area.

The Witness: I would estimate that there are at least $2\frac{1}{2}$ sections of territory that could reasonably be considered as well up near the top of the structure.

The Court: About 1500 acres? A. Yes.

Q. (By Mr. Scampini): In the year 1943 did you observe or did it come to your attention any development in respect to the Rio Vista field across the Sacramento River?

Mr. Bourquin: I object to that. That was covered on direct examination by counsel.

Mr. Scampini: May it please the court, counsel has asked the witness questions relating to the possibility of the Sacramento River constituting a fault and thereby separating the Cal Bay property from the Honker Bay development of Standard Oil. We desire to ask the witness certain questions bearing on that phase of the testimony.

Mr. Bourquin: I think we went into it yesterday. My objection is purely that it is not redirect examination.

The Court: I think it has all been described. If there is anything you wish to call——

(Testimony of Byron B. Norris.)

Mr. Scampini: I will put it this way:

Q. How many miles from the Honker Bay gas field lie the Cal Bay and Joseph Faria properties, approximately? A. This area in orange.

The Court: How many miles? Let's see if we cannot move along. How many miles?

The Witness: This is Suisun Bay. This is the area. I would say about three miles, three and a half, possibly.

Q. (By Mr. Scampini): When you refer to Suisun Bay, are you certain you were referring to Suisun Bay, or to Honker Bay field?

A. I was referring to this field, right here.

Q. What is that? A. That is Honker Bay.

Q. How many miles in length is the Rio Vista structure, if you know?

A. It is about eight or nine miles the long way.

Q. Does the Rio Vista structure produce in commercial quantities on both sides of the Sacramento River? A. It does.

Q. Have you any opinion as to whether or not the Cal Bay structure if extended northwestward would come in contact with the Honker Bay structure?

A. Yes, I have. There is no geological indication that I have observed that would prevent a connection across there.

Q. As the result of your data and the result obtained in the course of drilling the Faria well to 4975 and based upon your knowledge of the geology of the district, have you any opinion as

(Testimony of Byron B. Norris.)

to whether or not any other probable producing gas sands underlie the Martinez formation in the Faria well?

A. Yes; the crustaceous formation would probably be productive at that location.

Q. With respect to the apex and axis of the anticline located [585] by you on the map, can you state whether or not the properties of Cal Bay Corporation and Joseph Faria, Jr. are favorably located? A. Yes, they are.

Mr. Bourquin: I object to it. I think it was covered.

The Court: He said that on direct examination. He said it was the apex before.

Mr. Scampini: For the purpose of the record, I don't think we have gone into that phase of it so far as constituting the apex of that structure.

Mr. Bourquin: I object. That has already been covered; it is not proper redirect examination.

Mr. Scampini: Has it?

The Court: I think it has been stated several times. There is not any objection to it being stated but there is no point in him saying the same thing. I think it has been covered. You have described it already for me and for the attorneys, haven't you?

The Witness: I believe I did, your Honor.

Q. (By Mr. Scampini): When you testified concerning the probable recovery in dollars from the sand being produced in the Faria well at the depth of 4268 feet, or thereabouts, and based on

(Testimony of Byron B. Norris.)

your valuation of 10 cents per thousand cubic feet you stated and figured mathematically if it produced 125,000 cubic feet a day it would bring in \$12.50 a day. A. Yes.

Q. Is it possible in the operation of a well producing gas [586] to produce gas from more than one formation at one time? A. Yes.

Q. How many formations can you produce from at the same time?

A. They could produce from as many formations as they had relative to the same pressure.

Q. What is your opinion in respect to the formation encountered at the 4975-foot depth, do you think it could be produced jointly with and at the same time as the production from up above?

A. I wouldn't recommend that. I believe it probably would have to produce—we haven't got sufficient data on that. I don't know what the bottom hole pressure is. If it would be higher than the upper sand the upper sand would be a thief sand. I mean it would take gas from the other. There has not been sufficient, or, in fact, there has not been any test made to demonstrate that.

Q. It is true, is it not, that the gas being produced or discovered in 1943 is an altogether different formation from the gas being discovered in 1944?

A. Yes, in my opinion it is.

Q. In other words, the gas which came up out of the well during the blow-out of 1944 could not possibly have been the same gas as was discovered in 1943? A. No, I do not think so.

(Testimony of Byron B. Norris.)

Q. You were asked a question as to whether or not anyone sitting property on that portion of the structure which is indicated as existing on the massive formation, if they were sitting there would they be sitting on top of a Keweenaw Hill. [187] and you said, "By no means could it be so assumed." Will you state whether or not there is any structure observable on any of the property evidenced within the color representing the massive formation?

A. It is a part of the antediluvial structure and it is shown there, but most of it is well down on the flank of that structure, but the fact the massive outcrops there on the edge of the structure and the flanks would indicate to me that any oil or gas in that formation would have been exhausted. I wouldn't recommend drilling on that at all.

Q. And on the axis or apex of the structure located by you on the Call Bay and Joseph Farm properties do any massive formations appear there at all? Take the apex—

A. No, not at the apex.

Q. What appears there? A. It is massive.

Mr. Bourquin: I submit that was all covered, your Honor.

The Court: It seems so to me.

Mr. Bourquin: He went into all of this and described the anticline and the apex.

Q. (By Mr. Scamplin): On the geological map upon which you have outlined the structure you have marked in heavier pencil the approximate

(Testimony of Byron B. Norris.)

location of the properties leased by Cal Bay Corporation. Will you now mark the approximate location of the properties leased by Joseph Faria, Jr.?

A. Mr. Faria had the Mary Faria property, the Alvarnez—— [588]

Q. Wasn't the Cal Bay property referred to by you just now? A. Yes.

Q. The Joseph Faria leases retained by him, will you please indicate them on the map?

A. Oh, outside the Cal Bay. He retained a portion of the Mary Faria property and a portion of the Geraldine Faria property.

Q. Please mark in pencil the outlines of them.

A. I can do that better on the other map, here.

Q. I would like to ask you to indicate the Joseph Faria property on your geological map and the anticline. Here are some colored pencils.

A. As I understand, this portion right here, that is, a portion of the south half of the southwest quarter of Section 21, is retained by Mr. Faria, and the Geraldine Faria property, there would be all of the southwest quarter of Section 22 and an irregular portion of the south half of the northwest quarter of Section 22 in this manner (indicating).

Q. With respect to the apex and anticline of the structure, can you state whether or not the Joseph Faria leases that you have just indicated on the map are favorably located?

A. Yes. The first one mentioned, the anticline runs right through the property, and the second one, it runs through the corner of it, the apex of the anticline.

(Testimony of Byron B. Norris.)

Mr. Scampini: I think that is all, your Honor, if you will just pardon me a minute. That will be all.

Mr. Bourquin: Before Mr. Norris leaves, if he is going to leave now, may I ask Counsel if we may see that Goudkoff report that the witness referred to of the micro-paleontology test at 4,823?

Mr. Scampini: At this time I offer in evidence as our exhibit next in order the Goudkoff report, your Honor.

Mr. Bourquin: May I see it, please?

Mr. Scampini: I ask that it be accepted as our exhibit next in order.

Q. (By Mr. Bourquin): May I ask you a question concerning [589] this, Mr. Norris, please?

The Witness: Yes.

Mr. Bourquin: I am not objecting to the offer—in fact, I want the report in evidence, your Honor.

The Court: Do you wish to have it marked at this time?

Mr. Bourquin: Yes.

(The report in question was thereupon received in evidence and marked Defendants' Exhibit 31.)

[Defendants' Exhibit 31 appears on page 1262.]

Recross-Examination

By Mr. Bourquin:

Q. Was the Goudkoff analysis or conclusion that you repeated made from an examination of fossil or organic matter in the core?

(Testimony of Byron B. Norris.)

A. The cores were submitted to him and he made an examination. He has both the statements in regard to that, and also from the lithology.

Q. Does he come to a conclusion from the organic or fossil matter in the core or not?

A. No, he comes to the conclusion from the appearance of the core as compared with other cores in the area.

Q. You mean from looking at it? A. Yes.

Q. Is that what lithological means?

A. Yes.

Mr. Bourquin: I would like to read this report, your Honor. It is addressed to Mr. Byron B. Norris, 1009 Subway Terminal Building, Los Angeles, California.

“Cal Bay Corporation, Faria No. 1 Well, Report on examination of two cores from 4,823 to 4,843 interval. [590] Formation 4,823 to 4,843. Dark, gray, impure sand grading into massive sandy shale. Contains no organic remains except scattered carbonaceous particles.

“Remarks: Because of the lack of diagnostic organic remains, the age of the formation represented by samples cannot be determined. Lithologically, the samples resemble some of those obtained from the cerros member (megabus stage of Clark & Vokes) cored by the Standard Oil Community No. 1.

“Respectfully submitted, Paul Goudkoff.”

That is all from the witness, your Honor.

(Testimony of Byron B. Norris.)

Further Redirect Examination

By Mr. Scampini:

Q. Mr. Norris, one question in respect to this: What is the Suisun No. 1 Well referred to in the report of Mr. Goudkoff?

A. That is the Standard Oil well across the bay.

Q. Across the bay where?

A. Across the bay from the Cal Bay property.

Q. At what field?

A. The Suisun Bay field.

Q. Where is the Suisun Bay field in relation to the Cal Bay?

A. There are two fields, of course, in that Suisun Bay. This would be the Suisun Bay field here (indicating on map). This is ordinarily known as the Honker Bay.

Q. How many miles approximately, across the river from the Cal Bay property is the Suisun Bay Community No. 1 Well? [591]

A. I would say it was about five or six miles.

Q. Is the Suisun Bay gas field a commercially productive gas field? A. Yes.

Mr. Scampini: That is all.

Mr. Bourquin: No further questions.

Mr. Scampini: I have one more expert on the geology of the structure and then I wish to put on my valuation expert.

The Court: Is this expert going to cover the same ground?

Mr. Scampini: Approximately; independent investigations made by him for the purpose of checking. I call Mr. John P. de l'Eau.

Mr. Bourquin: So we may plan for our own case, may we ask how many witnesses will follow this one?

Mr. Scampini: There will be two witnesses, two valuation experts.

Mr. Bourquin: Two in addition to the gentleman you just called?

Mr. Scampini: Yes. I may have a fifteen or twenty-minute examination of one of the previous witnesses, but perhaps not. At any rate, I hope to be finished in a reasonably short time.

The Court: That means four experts in this case. That is too many, Counsel. I must again say we should have covered this matter in a pre-trial conference. I find myself [592] somewhat neglectful of it for not having done so. How many witnesses does the Government propose to present?

Mr. Scampini: May it please the Court, the expert that I desire to produce now will testify as to actual observations made by him and the conclusions that he reached with respect to whether or not a commercial discovery of natural gas has been made on this property, and I feel it is one of the essential features of my case. I feel that is one of the most important issues in this trial.

The Court: You have already just put a witness on to do that. There is no limit to the number of experts that any side may produce in a case, that is,

no limit in numbers, that is why the discretion is vested in the Court in these cases to limit the number in some way, because if you can produce four, you can produce ten, fifteen or twenty. I have rarely seen the case where the other side could not duplicate that, doing the same thing, which leaves the poor jury in the position of being more confused than ever, which is not the purpose, of course, of a trial. I will allow this witness to take the stand if you will confine him precisely to some specific matter that you wish to go into, without taking up a lot of time with him. Otherwise it is simply cumulative and will lead the Government to produce, so they can say to the Jury they have produced as many experts in number as you have, the same number, and that is not conducive to the [593] accomplishment of justice.

JOHN P. de l'EAU

called as a witness on behalf of the defendants; and being first duly sworn, testified as follows:

Direct Examination

By Mr. Scampini:

Q. Mr. de l'Eau, what is your profession?

A. Engineer and geologist.

Q. From what school did you graduate?

A. I did not graduate. I have a high school education and I have had two years experience with the Lowell Engineering School in Lowell, Kentucky.

(Testimony of John P. de l'Eau.)

We had a three-year course there, which is equivalent to about four years in university work.

Q. How long have you engaged as a geologist and petroleum engineer?

A. Over forty years.

Q. For what companies have you worked as a geologist?

A. In Kentucky I worked for the Louisville and Nashville Railroad for two years in the engineering department, working on underground surveys for coal mines and related geology. Then in 1906 I was sent to California by an eastern company to report on the sandstone deposits in the Sespe Canyon in Ventura County, which at that time was a commercial product for building purposes. While doing this work I made the acquaintance of a good many oil companies operating in Sespe Canyon, and I decided after I finished my report to these [594] eastern people to stay in California. I have done underground work in tunnels and dam foundations for the Southern California Edison Company, the Arrowhead Reservoir Company, and that work also provided that I should interpret the geology that the tunnels cut through, so they would know what thickness of cement to line the tunnels with.

I did work for the Union Oil Company, the Associated Oil Company, now the Tidewater; I was director and geologist for the Globe Petroleum Corporation, and I have done work for the Wilshire Oil Company, also on Signal Hill for a good many companies there. I have gone east to Oklahoma, Texas, Idaho, Oregon, Wyoming, Montana and

(Testimony of John P. de l'Eau.)

Utah. A good deal of my work has been in conjunction with industrial geology related to deposits like paint deposits, cement deposits.

I have done a good deal of work in Nevada in Kaolinite deposits for the Burbank China Company in Los Angeles; also silicate deposits for the United Byproducts Company of Los Angeles.

I have done work all over California for the various companies. In 1915 I had a client in London, England, Mr. Hatley Chapman, that I did a great deal of work for in California, and reported on properties in Montebello, made appraisals, and jumping over the years, in 1936 I was retained by the Board of Supervisors of Santa Barbara County and the Board of Army Engineers working under Major Wyman to make an economic survey of all the physical properties in the Santa Maria Valley, covering over 100,000 acres, the total valuation of that property, which was over \$118,000,000. I did all the geological work, made all the maps, had charge of all the field men doing that work.

In 1914, before the formation of the present division of oil and gas, I was retained by the water control board of nearly all the companies in the Santa Maria section that made up a committee which was designated as the Water Control Board, and I made a peg model and a ditch control survey for the elevations of the wells. I made cross-sections and constructed a peg model of the whole field, the purpose of that study being to study the infiltration of water. [596]

(Testimony of John P. de l'Eau.)

That was before the formation of the Division of Oil and Gas in this State, and the State had no control over water as they do now. That is up to the present. In the last four years I have been associated with John H. Wentz, Jr., a geological service.

Q. In the course of your activities have you discovered as a result of your own work any oil fields in California?

A. I drilled five wells of my own. I drilled three in Santa Fe Springs, two of which were over a thousand barrels. I had a major interest in my own money in those wells. I drilled one of my own in the semi-tropics with a partner, Joe Kerwin, and I drilled one in Edison Field. I discovered the Edison Field in 1927, which I afterwards sold out to the General Petroleum and Richfield.

Q. Have you made a geological study of the property leased by the Cal Bay Corporation and Joseph Faria, Jr., upon which was drilled the Faria Well No. 1? A. I have.

Q. When did you commence that study?

A. In the latter part of December I got a telephone call——

The Court: December of what year?

A. 1944.

The Court: That answers that. What is the next question?

Q. (By Mr. Scampini): When did you appear at the location for the first time?

A. The day after Christmas 1944.

(Testimony of John P. de l'Eau.)

Q. What did you first observe upon your arrival at the well?

A. Mr. Wentz accompanied me on this trip. We met Mr. Faria—— [597]

The Court: Don't get into that. Just say what you saw.

The Witness: We went out in the field and we saw the formation was sedimentary. There was no negative formations—I mean by that granite or other rocks that would interfere with the proper structure, and that the formation was marine.

Q. Did you make any observations, or note anything unusual at the well, itself, when you first arrived?

A. We went up to the well. The gas was leaking around the control head. It evidently was not very tight.

Q. Did you thereupon proceed to make a geological survey of the structure?

A. Well, about two weeks after——

The Court: Answer "Yes" or "No."

A. Yes.

Q. (By Mr. Scampini): When did you start your work? A. January 15th.

Q. What did you do for that purpose?

A. I went up, myself, and took my pocket transit and clinometer, which I used in the field, drove around the fields and walked the beds; but prior to that I had made a research of all the publications and private reports in the area, so I would have something to base my work on in order to save as much time for my client as I could.

(Testimony of John P. de l'Eau.)

Q. In the course of your activities did you study the geology of the rocks and formations exposed in that vicinity? A. Yes.

Q. I will now refer you to the map which is on the stand, here, [598] Defendants' Exhibit 10, and I ask you whether or not in the course of your studies and observations you located an anticlinal structure? A. I did.

Q. Will you please indicate with respect to the map, Defendants' Exhibit No. 10, the approximate location of the anticlinal structure found by you to exist there?

The Court: Counsel, are you going to go over the same matter again that counsel for the Government said there was no dispute about, the nature of the structure?

Mr. Scampini: If counsel will stipulate to that, I will be prepared to accept the stipulation.

Mr. Bourquin: Your Honor, in general I do not think there is any dispute as to this. I think if the matter becomes of importance, we would say that Mr. Norris was mistaken in his placement of both beds and the upper structure, but generally——

The Court: I do not see why we have to go to the map and go all over this business of describing this country again. Can't you get this witness to state what his opinion is as to the nature of this particular property? Just have him state it, and I will say in advance that if counsel on the other side objects because the proper foundation has not been laid, I will overrule it, because we have had too much talk about it already. Just get right down to

(Testimony of John P. de l'Eau.)

it and let him tell us what his opinion is as to this particular structure. Will you do that?

The Witness: Yes. It is my opinion, and that of my partners, [599] also, that this is a major structure that has definite dips on both sides. It has a plunge to the northwest, and covers an area somewhere around 1500 acres, which we think is potential gas land. We were furnished a great deal of information in making our report, and we came to the conclusion that there was a gas discovery there.

Q. At what depth? A. 4975.

Q. In what formation? A. Martinez.

The Court: Mr. Scampini, I want to repeat again, so there will be no misunderstanding, that I am not trying to shut you off. You can ask him to give his reasons for it. I wanted him to get down to it and then give his reasons.

Q. (By Mr. Scampini): Please give your reasons and the factors you have taken into consideration in arriving at that opinion and conclusion.

A. Well, the first thing a geologist does when he goes out in the field is to determine if the beds are sedimentary, and whether the sedimentary beds are marine. There is a difference between fresh water sediments and marine sediments. These sediments were marine. I found evidence of fossil—flora and fauna, as we speak of it—and it had dips on both sides; it had a definite plunge to the northwest. I found a fault in Willow Pass. There was one in Kirker Pass, which definitely showed a closure on

(Testimony of John P. de l'Eau.)

the east, which would justify the conclusion that a structure was there, because the structure had a plunge to the northwest. There was no volcanic action really except along the fault on the [600] southwest flank that Mr. Norris described, which was evidenced by basalt flows through that fault. That could be traced quite a long ways by sinks and depressions, which are indexes to the location of the fault line. That was my reason for it.

Q. In arriving at your opinion that a major discovery of natural gas was made on this property, did you take into consideration the results obtained in the course of drilling the Faria Well No. 1?

A. Say that again?

(Question read.)

A. Yes.

Q. Did you make a study of all the incidents that occurred in connection with the drilling of the well?

A. Yes.

Q. Did you prepare a cross section of the anticlinal structure located by you at this location—

The Court: I think perhaps you might put that in evidence. I suppose you want to do that after the recess?

Mr. Scampini: Very well.

The Court: We will take the noon recess at this time, ladies and gentlemen. I will ask you again to bear in mind the admonition of the court. We will resume at two o'clock.

(A recess was thereupon taken until two o'clock p.m.) [601]

Afternoon Session, January 30, 1947, 2 p.m.

JOHN P. de l'EAU,

recalled.

Direct Examination
(Resumed)

The Court: You may proceed.

Mr. Scampini: Mr. de l'Eau, the result of the studies made by you with respect to the geology of the section embraced within the property of Cal Bay and the vicinity, did you make a geological map of the Mt. Diablo-Port Chicago-Pittsburg area embracing therein cross sections of the anticline located on the structure? A. I did.

Q. Will you please go to the blackboard? The map you are referring to as having been prepared by you—— A. This one.

Q. That is the geological map of this Mt. Diablo-Port Chicago-Pittsburg area within the Suisun Bay gas field? A. Yes.

Q. Upon what information available to you or knowledge possessed by you did you prepare that map?

A. First I did a great deal of research work on the publication, both official and private, to base my work on. Most of this work I based on the work of Professor Taft, particularly in relation to the Mt. Diablo thrust, and I carried the formations clear on through. There had not been much work done immediately in this territory. In fact, in developing this I found not very many of the geologists knew anything about the area. They didn't know an anticline was there. [602]

(Testimony of John P. de l'Eau.)

Mr. Bourquin: We ask that the last be stricken.

The Court: All right.

The Witness: I made a study from that and made the map.

Q. (By Mr. Scampini): With reference to the cross section of the anticline shown on that map to which I shall soon refer, upon what information available to you or knowledge possessed by you did you base the making of that map?

A. Well, after the aerial geology was taken it was necessary to get the log of the Cal Bay oil and also Standard Oil well Kellar No. 1 log. From the evidence given to me on those logs I made the cross sections showing the formations they were in.

Q. Referring you to the map—I now offer this in evidence as our next exhibit.

Mr. Bourquin: May I take a look at it? Mr. Scampini, would you be good enough to locate for me where the subject property is?

Mr. Scampini: Cal Bay Corporation (indicating).

Mr. Bourquin: I see. Thank you. What is the scale of this map?

The Witness: It is on here.

Mr. Bourquin: Can you tell it?

The Witness: One-half inch to the mile. I had to look at it, myself.

Mr. Chamberlin: Would your Honor care to see a copy of [603] smaller size? This is just an enlargement (handing map to the court).

(Testimony of John P. de l'Eau.)

Mr. Bourquin: May I ask the witness a question or two about the map?

Mr. Scampini: Yes.

Mr. Bourquin: On the subject of the offer.

Mr. Scampini: Yes.

Q. (By Mr. Bourquin): This cross section EF on the map, what is that meant to represent?

A. That goes through the Mt. Diablo region to the north, based on Professor Taft's work.

Q. Based on Professor Taft's work. Thank you.

Your Honor, the objection I can see to the map is apparently it offers to present material with reference to this well which belonged to Kellar, that has been called Kellar No. 1. In that respect, I wanted to object to the map, as we don't want to undertake an investigation of any other property from this. I therefore object to the introduction of the map because on that feature, on that ground, and if they want to eliminate that which appears to be a small section at the bottom, then I will not object to the introduction of the map.

Mr. Scampini: We so stipulate, your Honor.

Mr. Bourquin: In other words, at an appropriate time the cross section CD may be removed from the map.

Mr. Scampini: That is correct, your Honor.

Mr. Bourquin: May that also be done with respect to that [604] much in this cross section GH which may also purport to present geological information pertaining to Standard Oil Kellar well.

Mr. Scampini: So stipulated.

(Testimony of John P. de l'Eau.)

Mr. Bourquin: Those may be taken out. With that understanding we will not object to the map, your Honor.

(The map was marked Defendants' Exhibit 32.)

Q. By Mr. Scampini): With reference to this map, will you now state to us, Mr. de l'Eau, the approximate location of the anticline found on the property in so far as it appertains to this property?

A. That is the approximate location, that line right through here marked with double arrows indicating that it dips to the northeast.

Q. Will you please indicate there the directional axis of the anticline?

A. This direction (indicating).

Q. What line are you pointing to?

A. Pointing to the one which is indicated on the map.

Q. That is line G-H on the map.

A. That is line G-H on the map.

Q. Will you please state what the arrows which appear in relation, or crossing, rather, the line G-H, are supposed to indicate?

A. That is the symbol of an anticline that we use in geology.

Q. The arrow pointing northwestward indicates what?

A. Indicates dips in that direction and the opposite one the [605] other dip in the opposite direction taken at right angles to the axis.

(Testimony of John P. de l'Eau.)

Q. Have you got your cross sections of that geology area indicating the geologic formations found underneath from the top to the basic rock?

A. Yes; that section A-B—take A-B as the first one, yes.

Q. Referring to section A-B, what does that represent?

A. That represents the cross section line here just as if you had cut that right straight through and would look at all the formations down to the bottom; just like you cut an orange in two and you see all the contents.

Q. What does the line indicating the cross section A-B and the word “Fault” represent to the west of the words “Cal Bay Corp Faria - 1?”

A. That is the fault that was referred to by Mr. Norris as existing through the side of the hill, between the valley and the beginning of the slope of the hill.

Q. What do the lines indicate on the cross section A-B under the heading. “Cal Bay Corp Faria - 1” represent?

A. This line, here?

Q. Yes.

A. That is the well location.

Q. Will you please tell the names of the formations penetrated by Faria Well No. 1 from the beginning to the very bottom of the hole, as disclosed by your cross section?

A. I classified that as undifferentiated miocene.

Q. When you say “that” what do you refer to?

A. The miocene has not been broken down into definite phases of the same formation, [606] but it broadly embraces that.

(Testimony of John P. de l'Eau.)

Q. What do you mean by that answer? Do you mean the formation under TUM? A. Yes.

Q. The formation TUM is in yellow?

A. Yes.

Q. That is undifferentiated miocene?

A. Yes.

Q. Below that formation you have another formation, have you not? A. Yes.

Q. That is designated as TMK?

A. That is Markley shale

Q. What does that Markley belong to?

A. Belongs to the oligocene.

Q. Where does the oligocene lie with respect to miocene and eocene? A. Between the two.

Q. With respect to the formation that is immediately below the markley, the TMK, what is the next formation? A. Tejon group.

Q. What is that?

A. That embraces Domengine and Meganos.

Q. The Domengine is part of the general age denominated eocene? A. Yes.

Q. Did the well penetrate any other formation below the ones that you have just told us about?

A. Martinez.

Q. What is that designated on the cross section under a symbol? A. TMZ.

Q. According to your cross section, where is the Cal Bay Faria well presently bottomed, or where was it bottomed?

A. According to our investigation in the Martinez. [607]

(Testimony of John P. de l'Esn.)

Q. Referring to that longitudinal section G-H, other than that portion which appears under the heading, "Standard Oil Co. Kellar - 1" will you please state what that represents?

A. That represents the section in this—

Mr. Bourquin: Well, counsel, when that occurred I did not fully understand the map, I will withdraw the objection I made to the map.

Mr Scampini: Very well.

Q. Referring to the longitudinal section G-H entitled "Longitudinal section along axis of anticline," what does that represent?

A. That represents the section as if it was cut right straight through on down and looking northeast.

Q. When you say "cut right straight through on down," what do you mean?

A. As my hand designates, cut right through here and remove the south half of it, you would look at all the formations clear down to the bottom of the well.

Q. As I understand your reference, you mean if you cut the section along the axis of the anticline part?

A. Yes.

Q. There would then be exposed the formations indicated on the longitudinal section G-H?

A. Yes.

Q. What formations are exposed in longitudinal section G-H?

A. The same ones that were found on the cross section.

(Testimony of John P. de l'Eau.)

Q. Where that line marked "Fault" on longitudinal section G-H to the west of the section, what fault does that represent?

A. We indicated on our map that as the Willow Pass fault, because [608] the Willow Pass Road went through there.

Q. Please indicate upon the general map where the Willow Pass Road, which is referred to here, appears on the surface.

A. The Willow Pass—pardon me, that is the Bailey Pass Road.

Q. Where is that? A. Right here.

Q. That line embraces the Bailey Pass fault?

A. That's right.

Q. What is the fault which appears to the east of the Cal Bay Corporation—Faria?

A. That is the one.

Q. That is the Bailey Pass? A. Yes

Q. What is the fault which appears to the west on the longitudinal section?

A. That is the Willow Pass. The fault as we have it out there is not Willow Pass, we could not find it after it continued up the pass there.

Q. When you came to the Willow Pass Road, is that the Willow Pass Fault, that is the particular fault that Mr. Norris testified as occupying that line in section 20 or 21? A. I believe so.

Q. Then this map indicates the direction of the Willow Pass fault?

A. Well, near the Willow Pass there, it is only a continuation of the Mt. Diablo fault, this one here.

(Testimony of John P. de l'Eau.)

Q Then on across Willow Pass?

A. Yes.

Q. What does the point found on longitudinal axis marked "Cal Bay Corporation Faria 1" represent?

A. That is the same well indicated here on that section. [609]

Q. What is meant by the words and colors appearing under the heading "Legend"?

A. That designates the symbols in each square and a color to make it more readily read.

Q. What do they represent?

A. Qal represents the alluvium.

Q. Where do you represent alluvium on the map?

A. All this in here.

Q. That back here and out here, what is that?

A. Orindan.

Q. That part of the pliocene?

A. Yes.

Q. Where does that appear on the map?

A. That is this that is marked "Tor" (indicating).

Q. Will you read the geological formations which you found existing on the structure as indicated on that legend?

A. Well, pliocene, the Orindan; we went from Orindan, this point, to San Pablo, indicated by "TSP."

Q. Then the undifferentiated miocene "TUM"?

A. Then we have the unconformity and go into the Kreyenhagen. That is the upper part of the oligocene. Then the Markley, indicated here, that

(Testimony of John P. de l'Eau.)

is "TMK," and lower part of oligocene; then come into the Tejon group, the Domengine and Meganos and the upper part of the eocene. Then Martinez where the well was drilled, "TMZ." The next formation is Mareno, the upper part of the cretaceous, and so on down clear on through way below anything found in either one of these wells, Standard Oil well or in——

Mr. Scampini: Well, that will go out. [610]

Mr. Bourquin: No. If you want to take the burden of proving the Standard Oil well I won't object.

Mr. Scampini: I am not taking any burden. I have burden enough. I will ask you one more question. Will you state whether or not a well driven on the property of Cal Bay Corporation straight down, as was done in the case in the case of Faria Well, would normally cross all these formations that appear on your legend?

A. That's right.

Q. Did it do so in this case? A. Yes.

Q. Down to Martinez? A. Yes.

Q. Now, I have only another phase of the case to cover with the witness and it may be we can cover that by stipulation. This witness, preliminarily, I might state, computed the area of the property embraced within the various leases prior to the taking by the Navy and the area of the property taken by the Navy, and the area of the remainder. Maybe we can stipulate to all that, otherwise I will have to prove how he computed it.

(Testimony of John P. de l'Eau.)

Mr. Bourquin: Haven't you an agreement as to that with some of the Government employees?

Mr. Scampini: I will show you this. I furnished them with this map. I don't think there can be much dispute. Maybe we can read into the record exactly what the acreage approximates in this exhibit, here.

Q. First of all, you prepared a map showing the leases? A. Yes.

Q. And the property taken and the property remaining? A. Yes. [611]

Q. Will you please produce that map and we will offer that in evidence, and then we will just read the acreage. You have produced a map entitled, "Map showing potential oil and gas land as taken by the U. S. Navy re extension of Naval magazine Port Chicago." Is that the map prepared by you for the purpose of determining the acreage embraced within the leases of Cal Bay Corporation and Joseph Faria prior to the Navy take and the acreage taken and remaining thereafter?

A. Yes.

Q. On what information available to you did you base your map?

A. I based it on the description in the leases, and also upon Government survey, the survey in the County Surveyor's Office.

Mr. Scampini: I now offer in evidence the map

(Testimony of John P. de l'Eau.)

as our exhibit next in order, and I will read into the record the amounts involved, your Honor.

The Court: Very well.

(The map was marked Defendants' Exhibit 33 in evidence.)

Mr. Scampini: It is stipulated, then, counsel, I take it, that in the Mary Faria lease which had been assigned to Cal Bay Corporation, there were embraced 367.36 acres of land and that of the 367.36 acres of land 208.83 acres were taken by the Navy, leaving 158.3 acres, is that right?

Mr. Bourquin: Agreed.

Mr. Scampini: And for the purpose of the jury, I think it has already been shown to them, but will you indicate on [612] the map the Mary Faria lease to which I have just referred?

The Witness: It is this portion in here, all in green, with the exception of these two small pieces, five acres and 4.96, which together total 318.79.

Q. We will come to that. Does the lease of Mary Faria also embrace the portions outlined up above the green?

A. Yes, here, and here, and back here (indicating).

Q. With reference to the Albert Faria lease, Parcel 58, 5 acres were embraced in that lease and all of those 5 acres were taken by the Navy.

Mr. Bourquin: Yes.

Mr. Scampini: With reference to the Mae E. Roche lease, which is Parcel 57 in the complaint,

(Testimony of John P. de l'Eau.)

4.96 acres of land were embraced within the lease, and all of that land was taken by the Navy.

The Witness: Yes.

Mr. Scampini: With respect to the M. V. Alvernaz piece, 310 acres embraced in that lease, and no portion thereof was taken by the Navy?

The Witness: Correct.

Q. Could you indicate the Alvernaz property?

A. Right here, in light green; here and here.

Q. After the Government, or the Navy having taken the property which is the subject of the action—may it be stipulated, Mr. Bourquin, that 208.83 acres were taken? Have I covered that? [613] Well, with respect to the Joseph Faria leases retained by him, under the Mary Faria lease 73.51 acres were embraced within his lease prior to the taking of 63.92 acres, leaving 9.60 acres.

A. (By the Witness): That's right.

Mr. Scampini: Will you indicate on the map where that lease, where that lease is? That is in yellow? A. Yes.

Q. The 9.60 represents the property retained or not taken from Joseph Faria?

A. That's right. 63.91 acres, indicated there (indicating).

Q. With respect to the Geraldine Faria lease, Parcel 64 in the complaint, 228.55 acres were embraced within the lease of which approximately .65 of an acre was taken, leaving 227.90 acres remaining? A. Yes.

Q. Will you point that out?

(Testimony of John P. de l'Eau.)

A. Yes. This is the Geraldine Faria Cal Bay, out here, and .65 acres indicated here.

Q. Does the map indicate the property involved within the lease of Joseph Chavez, retained by Joseph Faria? A. Yes.

Q. That is Parcel 71, that is at the southeast corner of the map; is that right? A. Right.

Q. In the leases there were originally embraced 414.19 acres of which the Government or Navy took 177.34 acres, leaving 236.85 acres. A. Right.

Q. Will you indicate the portion taken and the portion not taken also?

A. This is the total lease, running clear around; this is the portion——

Q. The portion marked yellow? A. Yes.

Q. The line which appears to the north starts under the words "Frank S. Dutra," entitled, "Parcel 60," and running generally southeast, then goes a little to the northeast; does that represent the northern boundary line of the Navy take?

A. Yes.

Q. The line which is entitled or marked as a fault on the map running generally from east to west and parallel to the northerly boundary line of the Navy take, what fault does that represent?

A. That is the Monte Del Diablo fault, or the one referred to by Mr. Norris.

Q. Appearing on that map where?

A. Right here, marked "Fault" here.

Q. Running just parallel to the general trend of the structure? A. Yes.

(Testimony of John P. de l'Eau.)

Q. For the purpose of resume, it will be stipulated that the total acreage embraced within the leases owned by Cal Bay Corporation prior to the Government taking the property aggregated 687.32 acres, of which 218.79 in all were taken, leaving 468.53 acres not taken. Is that correct, approximately?

Mr. Bourquin: I did not follow your computation. Will you give me that again? What was the figure you said?

Mr. Scampini: The aggregate of 687.32 acres.

Mr. Scampini: You may take the witness.

Cross-Examination

By Mr. Bourquin:

Q. Mr. de l'Eau, had you been at the property at any time before December 26, 1944?

A. No, I never had.

Q. So that would be clear; in other words, your first visit to the property was at the end of the year 1944?

A. That is right.

Q. With that visit did you remain and make your explorations or did you go and return?

A. No, at first—what I did, I looked up Mr. Faria to see if we would get our money first.

Q. Then did you go ahead and make your exploration of that matter, or did you go back to Los Angeles?

A. I went back to the office and looked up the regional geology to estimate how long it was going to take to do this work, and then I returned to the field on January 15.

(Testimony of John P. de l'Eau.)

Q. And made a geological survey?

A. Yes.

Q. Or investigation? A. Yes.

Q. I gathered from what you testified you came to the conclusion that there was a geological structure present capable of holding a commercial gas deposit; that was your conclusion?

A. That is right.

Q. Had you ever engaged or been associated with any oil or gas exploration in northern California before? A. Yes.

Q. Where, please?

A. I have made reports from Tehama [616] County to Sacramento on the gas fields in the northern part of this state.

Q. Did you ever take part in an enterprise as an associate or advising geologist in any gas or oil exploration in northern California? A. Yes.

Q. For whom, please?

A. I was associated with Mr. Ward B. Blodgett. We did some work up north.

Q. Maybe you misunderstand me.

A. No companies.

Q. No companies? A. No companies, no.

Q. You had never before been associated with any company making an exploration for oil or gas in California?

A. No, we work on a consulting basis.

Q. Had you ever been associated with any individual who did any exploratory drilling in northern California before?

(Testimony of John P. de l'Eau.)

A. You mean as a financial associate, or just what do you mean there?

Q. Let us get it by degrees. Did you ever do any exploratory drilling? Did you ever drill an oil or gas well in northern California?

A. No, I never drilled one up there.

Q. Did you ever in the capacity of engineer or geologist participate in drilling a well for oil or gas in northern California before? A. No.

Q. You never had? A. No.

Q. In coming to your conclusion that there was a gas discovery made here, do you predicate your opinion on the same practice [617] that Mr. Norris enumerated here to us?

A. I don't recall just what he said.

Q. Did you hear him testify?

A. Yes, but I don't recall the answer or the question.

Q. Have you discussed the subject with Mr. Norris at any time?

A. Oh, during the preparation of our report, why, we naturally asked him for information, because I didn't get his report until I had done this field work. I didn't know he made one before.

Q. You did not know he had made a report until you made yours?

A. Mr. Faria said he had a report. Mr. Faria said he would send me the report, but I did not get it until I had finished my work.

Q. You knew he had made a report, but you did not get it?

(Testimony of John P. de l'Eau.)

A. I knew he had done the work. He was going to send me the report, but I did not get it until after my field work was completed.

Q. In other words, you mean that Mr. Norris had made an investigation and report, but you did not wait on that to make your own investigation and report? A. That is right.

Q. Had you afterwards consulted with Mr. Norris and compared your notes and findings on the matter? A. Naturally.

Q. Do you agree? A. Yes.

Q. In all major respects in this matter you are agreed, are you? A. That is right. [618]

Q. Were you here in court this morning?

A. Yes.

Q. Were you here in court yesterday?

A. Yes.

Q. Did you hear Mr. Norris enumerate the four factors on which he predicated his opinion that there was a commercial discovery here?

A. Yes.

Q. Do you agree with him there? A. Yes.

Q. Do you predicate your conclusion on any different factors?

A. No, those are the controlling ones.

Q. Those are the controlling ones?

A. Yes.

Q. I won't stop to recite them? A. Yes.

Q. On the subject of this cross-section map, Mr. de l'Eau, from what evidence did you base your

(Testimony of John P. de l'Eau.)

analysis of the respective—what do we call them, formations or beds? A. Yes.

Q. Formations—— A. Yes.

Q. ———that you conclude were present in the Cal Bay exploration? A. That is right.

Q. Upon what evidence do you base your report?

A. Do you mean the sub-surface geology or the surface geology?

Q. The sub-surface geology?

A. I based it on the Standard Oil well log, the Cal Bay well log, and also the formations given in Professor Taft's report on the Mt. Diablo region.

Q. Upon what evidence did you base your conclusion that at [619] 4,975 feet the well was in the *martines*?

A. Well, I will tell you. I didn't get up there until after the well had finished all this. I went over and looked at some of the cores, but they had already been moved off the property preparatory to abandoning, and they were away over on another property, Brentwood, and I tried to get some of them, but they were so mixed up I couldn't do it. Then after that I went down and talked to Mr. Pickett of the Union Oil Company at Bakersfield, whom I understood had worked with Mr. Glenn Ferguson on this.

Q. Yes, but I do not want you to tell me what somebody told you, because we will have to go out and find the man then. I want you to tell me what evidence you had, something that you saw——

A. Nothing.

(Testimony of John P. de l'Eau.)

Q. —upon what you predicated your conclusion that the well at the depth of 4,975 feet on November 25, 1944, was in the Martinez formation.

A. Well, I based it on the Cal Bay electric log compared with the Standard Oil log, and also the fact the stratigraphy of that region showed approximately around 5,000 feet they should be in the Martinez.

Q. Let us take that by degrees. Was there any electric log run on the Cal Bay well in 1944?

A. I have a copy of the log, but you will have to look on there to see the date on it. The log I have only went to 4,343, I think. [620]

Q. You will agree with counsel that there was no electric log data below 4,343?

A. That is right.

Q. Let us eliminate that. Then, what other, if any, basis did you have for your conclusion—

A. The Standard Oil log.

Q. The Standard Oil log? A. Yes.

Q. You mean that Standard Oil experience over in Honker Bay?

A. No, the Keller well three miles southeast.

Q. Three miles southeast? A. Yes.

Q. In a dry hole? A. Yes.

Q. Did you have any other basis for concluding what formation Cal Bay was in at 4,975 feet?

A. I made a section between the Standard Oil well crossing the fault through the Cal Bay well—we made studies of that, which I have here, preparatory to putting them on this map.

(Testimony of John P. de l'Eau.)

Q. In other words, you mean it was a process of analysis? A. That is right.

Q. Of what the Keller had, and translating it geologically to what should be present in Cal Bay at 4,975, is that correct?

A. That is right, because the Standard Oil log had the paleontology furnished.

Q. Is that an infallible method of ascertaining?

A. It is just as perfect as we can get it.

Q. Do you feel that is perfect? A. Yes.

Q. Did you pay any attention to this micro-paleontologist's [621] information, or do you know there was such existing?

A. No, it would not have made any difference in my final analysis.

Q. It would not have made any difference?

A. No.

Q. Let me ask you this: If the fact were that at 4,400 feet the Faria well had penetrated the cretaceous, where then would you say they were at in deeper level?

A. They penetrated the cretaceous at forty-three? They would still be in the cretaceous.

Mr. Bourquin: That is all.

Mr. Scampini: That is all.

The Court: I just wanted to ask you a question, if I may.

Q. Did you ever give any opinion to any oil company as to the purchase of any property?

A. Yes, I have. That naturally comes along in my work.

(Testimony of John P. de l'Eau.)

Q. (By the Court): What oil company?

A. (By the Witness): Oh, I have advised with nearly every company near Los Angeles except the majors—the Standard, and so on, they have their own methods.

Q. (By the Court): You do not tell them what to pay for it?

A. (By the Witness): No. Sometimes they ask me. You know, as appraisers, we generally know pretty well what values are, and some of our clients will say, “Do you think we are paying too much for that?” or other problems.

Q. (By the Court): On the strength of what you examined, would [622] you advise any company or group of people to buy this property?

A. Absolutely.

Q. (By the Court): You would?

A. (By the Witness): Absolutely.

Q. (By the Court): On what you thought should have been down there?

A. (By the Witness): That is right.

The Court: That is all.

Mr. Scampini: That is all.

Q. (By Mr. Bourquin): I take it your advice then again would be based upon the four factors upon which your conclusion of discovery of gas was made, wouldn't it?

A. Yes, that is right.

Mr. Bourquin: That is all.

Mr. Scampini: I call Mr. John H. Wents.

JOHN H. WENTS, JR.

called as a witness on behalf of the defendants; and being first duly sworn, testified as follows:

Q. (By the Clerk): State your name to the Court and Jury, please? A. John H. Wents.

Direct Examination

By Mr. Scampini

Q. Mr. Wents, what is your profession?

A. Consulting petroleum engineer and geologist.

Q. How long have you been engaged in that profession?

A. The practice of geology for approximately twenty years, and [623] as a consultant for the last nine years, approximately.

Q. In the practice of geology, for what companies have you done work or did you work?

A. I worked for a great many companies.

Q. Just name some of them.

A. I have been employed by the Associated Oil Company, the Marlin Oil Company, the C.C.M.O. Oil Company, the McMillan Oil Company, J. Paul Geddy, who as an individual has controlling interest in the Skelly Oil Company, the Pacific Western Oil Company, the George F. Geddy Incorporated, and a considerable holding in the Tidewater Associated Oil Company.

I have worked for Lloyd Gilmore, who represents the Eastman Dillon Company of New York. I worked for various banks. I worked for the United States Government. I worked for the County of

(Testimony of John H. Wents, Jr.)

Los Angeles and independent operators, probably 25 operators in all.

Q. Have you supervised the drilling of oil wells during your career?

A. As a petroleum engineer?

Q. As a petroleum engineer.

A. In the last five years I probably drilled in the order of two hundred wells.

Q. Have you made appraisals of oil or gas properties?

A. Outside of the direct supervision of petroleum engineer and of oil field development, my principal work is involved in the appraisal of oil, gas and mineral properties.

Q. For what companies, or for whom have you made appraisals [624] during the last, let us say, five years?

A. I might have mentioned previously that I am employed as a consultant for the Dominguez Estate Company, the Watson Land Company, and the Carson Estate Company. Those companies are some of the principal owners of oil lands in southern California. And in the course of my employment for them I have prepared appraisals of their entire oil and gas holdings, that is, for each of those companies.

In the case of the United States Government, No. 2454-B Civil, which is the appraisal of the Playa Del Rey, I prepared appraisals for the Block Oil Company and the McAdams Oil Company. I am engaged in the work of preparing appraisals of Thomas and L. C. Kelly, Well No. L. and T. No. 1,

(Testimony of John H. Wents, Jr.)

of the Treasure Oil Company, Well No. 8, of the Samarkland Oil Company, Well, No. 1. Those are in the process of preparation, being a part of my contract with the Government with respect to the case I mentioned.

Q. With respect to the case you have mentioned, if I may interrupt, are you acting as an appraiser for the United States Government or the property owners?

A. I am employed by the Attorney General's office, the United States Attorney General's office, in the matter. I have appraised a lot of royalty interests, that is, in wells scattered throughout the entire oil area of California, and in connection with other work I prepared a geologic report and appraisal of 39.37 acres [625] of land in the City of Long Beach. That was prepared for the Attorney's office of the Southern District of California, Federal Land Division.

I have made appraisals for Arthur Anderson and his wife with respect to land in the Coalinga-Riverdale oil fields. That appraisal work was in the preparation of an appraisal for use in inheritance tax purposes.

I have appraised and been engineer and geologist for the H. M. Holloway interests. H. M. Holloway, Incorporated, is the largest producer of gypsum, agricultural gypsum in the United States. In fact, it produces in the order of 68 per cent. I have been in charge of his geological exploration work, and in connection with that exploratory work we have

(Testimony of John H. Wents, Jr.)

the right as the result of a discovery to claim discovery value and get depletion allowances for income taxes. So I have done Holloway's work.

I have appraised the holdings of the St. Francis Oil Company for the purpose of obtaining a loan on the part of that company from the Reconstruction Finance Corporation.

I also appraised the oil development of George B. Nortonholt. Mr. Nortonholt used to be the head of the Division of Lands of the State of California.

I appraised land for the County of Los Angeles. That report was prepared at the request of John H. O'Connor of the County Council. [626]

I prepared geologic reports, for example, on areas such as the South San Diego area. That was a report prepared down there for Robert Eaker, Warren Thomas and James Crofton.

I prepared appraisals for the Balsochico Oil Company. I appraised the Snow lease in the Temescal Oil field. I appraised the mineral rights in a leasehold interest of the Candua Company, Limited, undeveloped potential mineral lands in Fresno County.

I appraised the lands within the Muroc Bombing Range for the Federal Government. That is a matter of clay resources, principally.

Q. Have you engaged in the purchase and sale of oil leases?

A. No, I have not really engaged in the purchase and sale of oil leases, but I have been con-

(Testimony of John H. Wents, Jr.)

sulted with respect to the value of properties which were being traded.

Q. Can you say the same thing with respect to royalty interests?

A. The same thing can be said with respect to my experience.

Mr. Scampini: I think it can be stipulated he is a qualified valuation expert.

Mr. Bourquin: He said he never bought or sold any leases. You go ahead. You will have to stipulate to that yourself.

Q. (By Mr. Scampini): Is there anything further you can say with respect to your qualifications?

A. Well, I don't know. It has been a very broad experience in working for major [627] companies and working for independent companies, in working for banks—I forget to mention that I have been employed to appraise for the Chase National Bank of New York, for the Corn Exchange Bank of New York, for the Citizens Bank of Los Angeles, for the California Bank of Los Angeles.

Q. By appraisals do you mean properties involving or containing either oil or natural gas or other minerals?

A. Or having no potentialities whatsoever.

Q. Have you made any appraisals for any persons or corporations buying royalty interests in oil and gas leases?

A. Yes, I made many of them.

Q. How many would you say you have made of those in the last five or ten years?

(Testimony of John H. Wents, Jr.)

A. In the last ten years? Perhaps a thousand.

Q. Would you say in the State of California or outside the State of California?

A. With respect to royalty interests, I have engaged only in the work in the State of California. I might add in respect to investigation, I made an investigation of parts of Oregon for the Pacific Western Oil Company and George F. Geddy.

Q. Have you made any appraisal of the properties leased by Cal-Bay Corporation located on the map which is on the bulletin board there in Contra Costa County near Pittsburg?

A. I made an appraisal of the properties of the Cal-Bay Corporation. [628]

Q. In the course of that appraisal, what properties did you appraise?

A. I appraised the Faria property known as Parcel No. 59, I believe, in this action. I appraised the Edward Faria property, known as Parcel No. 58 in this action. I appraised the Mae E. Dutra property known as Parcel No. 57 in this action.

Mr. Scampini: That is also known as Mae E. Roche, is that right, Counsel?

Mr. Bourquin: Yes, that is agreed.

The Witness: I also appraised the Manuel Alvernaz property. There is no appraisal number given with respect to that property, because it was not touched directly by the taking.

Q. (By Mr. Scampini): With respect to the property or the leases of Joseph Faria, Jr., located

(Testimony of John H. Wents, Jr.)

immediately adjoining the Cal-Bay leases, what properties or leases did you appraise?

A. For Joseph Faria, Jr., I appraised the Mary Faria property known as Parcel 59, the Geraldine Faria property known as Parcel 64 in this action, the Ralph D. Bollman—no, I did some work on the Ralph D. Bollman and it was omitted from my appraisal. The Joe Chevez property known as Parcel 71.

Q. And did you make an appraisal of the royalty interest of Mary Faria under her lease?

A. I made an appraisal of the royalty interest of each of the parties under each of the leases that I have mentioned.

Q. Are you familiar with the total acreage of land embraced [629] within the Mary Faria lease owned by Cal-Bay Corporation prior to the Government, Navy, taking as a result of the present action?

A. I am familiar with the total acreage of that parcel.

Q. Are you also familiar with the amount of acreage taken by reason of the Navy taking in this action from the Mary Faria lease which had been assigned and was owned by Cal-Bay Corporation?

A. Mr. John de l' Eau, who just testified here, and I worked on this together, and I am familiar with all those acreages.

Q. Do you know the definition of "fair market value?"

A. I do.

Q. What is that definition?

(Testimony of John H. Wents, Jr.)

The Court: You are not going to have him tell us what the law is?

Mr. Scampini: Very well, your Honor, I will withdraw the question.

Q. Have you any opinion as to the fair market value of the 208.83 acres of land or leasehold estate in 208.83 acres of land owned by Cal-Bay Corporation in the Mary Faria lease taken by the Navy pursuant to this action as of January 15, 1945?

A. I have an opinion.

Q. What is that opinion? A. \$217,138.

Q. Have you an opinion as to the fair market value of the leasehold estate of Cal-Bay Corporation in the 5 acres of land [630] embraced within its lease from Edward Faria taken by the Navy pursuant to this action and represented by Parcel 58 in this action as of January 15, 1945?

A. May I hear that question again?

(Question read.)

A. I have.

Q. What is that opinion? A. \$3,875.

Q. Have you an opinion as to the fair market value of the leasehold estate of Cal-Bay Corporation on the 4.96 acres of land embraced within the lease owned by it from Mae E. Dutra Roche, represented and taken by the Government pursuant to this action in Parcel 57 as of July 24, 1944?

A. I have.

Q. What is that opinion? A. \$3,644.

Q. Have you formed any opinion as to whether or not the leasehold estate of Cal-Bay Corporation

(Testimony of John H. Wents, Jr.)

in the 158.53 acres of land retained by it in the Mary Faria lease after the Government taking of 208.83 acres was damaged in any amount by reason of the Government taking?

A. I have an opinion.

Q. What is that damage?

A. I figured my values on the before and after method, and there was a decrease in the value of the worth, or the worth of the remaining property after the taking. Now, I may have been in error in my answer beforehand. I gathered you wanted the value as of the taking—not prior to the taking.

Q. As of the taking?

A. As of the taking, which would include in the before and after method the net, that is, the value before less the value after, and the answers I have given to this time have been the damage suffered by the respective parcels of land from their taking. Does that explain it?

The Court: That is more confusing than anything I have ever heard.

Q. You understand the difference between the market value of property taken and severance damage?

The Witness: I do.

The Court: Now, the values you have given us already, are they the market value of the lessees' interest? If a willing buyer came along would he pay for the lessee's interest in the so-called Maria Faria property \$217,138?

(Testimony of John H. Wents, Jr.)

The Witness: Before the taking, or after the taking?

The Court: At the time of the taking, as of that date.

The Witness: Well, then I will make a correction as to my answers, your Honor. I considered it after the taking.

The Court: What do you mean by after the taking?

The Witness: In other words, what the damage was that was suffered by reason of the taking.

The Court: I think you had better withdraw this witness and find out, Counsel——

Mr. Scampini: May I ask for a recess at this time?

The Court: Yes, we will take a recess at this time. [632]

Ladies and gentlemen, remember the admonition of the Court.

(Recess.) [632-a]

Mr. Scampini: I desire to again ask the witness, may it please the court, because the witness will reply, I think, that he misunderstood my question.

Q. Did you make a valuation of the leasehold interest of Cal-Bay Corporation and of Joseph Faria in so far as it applies to market value of the property taken plus damage to the remaining?

A. Yes, I did.

Q. Did you also make a valuation of a leasehold interest based on what is known in your profession of before and after theory? A. Yes, I did.

(Testimony of John H. Wents, Jr.)

Q. When you replied to my question as to what theory you had followed——

A. I was following the before and after theory.

Q. Do you desire to change the answer you gave?

A. I do desire to change the answer, because I misunderstood the question.

Mr. Scampini: May I ask to start from the beginning, your Honor?

The Court: Yes.

Q. (By Mr. Scampini): Have you formed, as the result of your appraisal, an opinion as to the fair market value on January 15, 1945, of the 208.83 acres of land taken by the Navy pursuant to this action, being portion of Parcel 59 embraced within the lease had by and owned by Cal-Bay Corporation, from Mary Faria? A. I have.

Q. What is that value?

A. \$411,500, in which \$234,000 was [633] included as the value of the well which was on the property.

Q. Have you formed any opinion——

Mr. Bourquin: May we have that answer read?

The Court: Yes. Read the answer, Mr. Reporter.

(The answer was read by the reporter.)

Mr. Scampini: Is it \$234,000—I think he said \$284,000, Mr. Reporter.

The Witness: \$234,000.

Mr. Scampini: I was mistaken.

Q. Have you appraised or have you any opinion as to the fair market value on January 15, 1945, of the five acres of land leased by Cal-Bay Corpo-

(Testimony of John H. Wents, Jr.)

ration from Edward Faria and taken by the Navy pursuant to this action, being Parcel 58 in the complaint? A. I have.

Q. What is your opinion as to the value of it?

A. \$3875.

Q. Have you formed an opinion as to the fair market value of the 4.96 acres of land leased by Cal-Bay Corporation from Mae E. Dutra Roche, on July 24, 1944, and taken by the Navy pursuant to this action, being Parcel 57 in the complaint?

A. Yes, I have formed an opinion.

Q. What is that opinion?

A. The amount is \$3850.

Q. Have you formed any opinion as to the damage caused to or depreciation suffered by the 158.53 acres of land remaining to Mary Faria under lease to Cal-Bay Corporation after the Government take of 208.83 acres?

A. Yes, I have an opinion. [634]

Q. What is that damage or depreciation as to that 158.53 acres? A. The sum of \$91,150.

Q. Have you formed any opinion as to whether or not the leasehold estate of Cal-Bay Corporation in the 310 acres of land leased by it from Manuel V. Alvernaz suffered any damage or was depreciated in market value by reason of the Government take of the portion of the leasehold estate of Cal-Bay Corporation?

A. I have an opinion, yes.

Q. What is that damage or depreciation?

A. That damage or depreciation is the sum of \$35,650.

(Testimony of John H. Wents, Jr.)

Q. With respect to the Joseph Faria, Jr., leases, have you made an appraisal and have you formed any opinion as to the fair market value of the leasehold estate of Joseph Faria in 63.91 acres of land taken by the Navy from Joseph Faria's lease, pursuant to this complaint, and being portion of parcel 59, said value to be fixed as of January 15, 1945?

A. I have an opinion.

Q. What is that opinion? A. \$17,575.

Q. Have you formed any opinion as to whether or not the remaining 9.60 acres of land leased by Joseph Faria from Mary Faria was damaged or suffered any depreciation in market value by reason of the Government take?

A. I have an opinion.

Q. What is that damage?

A. The damage is \$1920.

Q. With respect to the Geraldine Faria leasehold estate owned by Joseph Faria, have you formed any opinion as to the market [635] value, the fair market value of the leasehold estate of Joseph Faria in the .65 acres of land taken by the Navy as of July 24, 1944, embraced within Parcel 64 in this complaint? A. Did you say .65?

Q. .65 acres.

A. Yes. That is .65 acres. I have an opinion.

Q. What is that? A. \$175.

Q. Have you formed any opinion as to whether or not the leasehold estate of Joseph Faria in the remaining 227.90 acres of land leased by him from

(Testimony of John H. Wentz, Jr.)

Geraldine Faria suffered any damage or depreciation by reason of the Government take?

A. I have an opinion.

Q. What is that damage or depreciation?

A. \$26,200.

Q. Have you formed any opinion as to the fair market value of the leasehold estate of Joseph Faria in 177.34 acres of land owned by, or in the lease of Joseph Chavez and taken by the Government pursuant to this action, being Parcel 71 as of July 24, 1944?

A. There was only 96.59 acres of that parcel taken, according to my record.

Q. What is the value of those 96.59 acres?

A. It has only a nominal value of \$100.

Q. Have you formed any opinion as to the value of the royalty interest of Mary Faria under her lease in so far as it applies to the 208.83 acres of land leased by Cal-Bay Corporation?

The Court: How many acres?

Mr. Scampini: 208.83 acres. In so far as it applies [636] to the 208.83 acres of land taken by the Navy from Cal-Bay Corporation.

A. I have an opinion.

Q. What would be the value of that royalty interest of Mary Faria in the 208.83 acres of land?

A. \$65,250.

Q. Have you formed any opinion as to whether or not the royalty interest of Mary Faria in the 158 acres, more or less, retained by her that is not taken by the Navy from Cal-Bay Corporation was damaged or suffered any depreciation by reason of the Government take of 208.83 acres?

(Testimony of John H. Wents, Jr.)

A. I have an opinion.

Q. What is that opinion?

A. That opinion is \$34,675.

Q. Have you any opinion as to the value of the royalty interest of Mary Faria in the 63.91 acres of land taken by the Navy from Joseph Faria, embraced within the lease owned by Joseph Faria as of January 15, 1945?

A. The royalty interest?

Q. Yes. A. Yes, I have an opinion.

Q. What is that opinion? A. \$9985.

Q. Have you any opinion as to whether that royalty interest of Mary Faria in the remaining 9.60 acres of land leased by Joseph Faria and not taken by the Navy suffered any damage or any depreciation by reason of Government taking?

A. I have an opinion, yes.

Q. What is that damage or depreciation?

A. The sum of \$1200.

Q. Now, upon what factors or information available to you or reasons did you base your valuation?

A. I based my valuation on the findings of my field work and on the findings [637] of Mr. de l' Eau's field work, Mr. John de l' Eau, and the findings of Byron Norris' field work, as well as all of the literature I had read with respect to this area, that is, with respect to geology. I based my conclusions with respect to the values on the showings encountered and during the course of the drilling of the Cal-Bay Corporation well. I based my opinion upon a knowledge of the trading prices of oil

(Testimony of John H. Wents, Jr.)

and gas land upon oil and gas royalty interests. I considered everything that came within the province of an oil and gas valuation in arriving at my opinion as of values.

Mr. Scampini: You may take the witness.

Mr. Bourquin: Counsel, I think that in your complaint you are praying for additional damages with respect to royalty interest, as you put it, that you did not cover. I thought rather than to have this witness come back again, if you wanted to you could cover it now, or are you abandoning it?

Mr. Scampini: Is it the Joe Chevez lease you are referring to?

Mr. Martin: The Dutra piece.

Mr. Scampini: Well, they were all taken with respect to——

Mr. Martin: Their royalty interest.

Mr. Scampini: Pardon me. You are right. Thank you kindly, counsel.

Q. Mr. Wentz, as the result of your studies and appraisals have you formed any opinion as to the fair market value of the [638] royalty interest of Edward Faria in the five acres of land embraced within his lease to Cal-Bay Corporation, and taken by the Government pursuant to this action, being Parcel 58, as of January 15, 1945?

A. Yes, I have an opinion.

Q. What is that opinion? A. \$300.

Q. \$300. Have you formed any opinion as to the fair market value of the royalty interest of Mae E. Dutra Roche in the 4.96 acres of land owned by

(Testimony of John H. Wents, Jr.)

her and leased to Cal-Bay Corporation, and taken by the Navy pursuant to this action, being Parcel 57, as of July 24, 1944?

A. I have an opinion, yes.

Q. What is that opinion? A. \$300.

Mr. Scampini: I think that covers it. I am abandoning any claim with respect to severance damages in the Joe Chavez piece. You may cross-examine.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Wents, counsel omitted to ask you, where did you have your geological training?

A. I went to Stanford University and the University of Southern California.

Q. Did you take an engineering degree at Stanford? A. No, I did not.

Q. What did you pursue with regard to studies there? Did you pursue geological studies?

A. I pursued my studies there during the course of four years' enrollment, but I never completed my course, as I outlined it, for the reason that I had to go to work; I ran out of money. [639]

Q. What course were you pursuing?

A. What course was I pursuing? Geology.

Q. Geology. A. Yes.

Q. You took a part of that course, you say as far as you could in your course at Stanford?

A. Yes. So far as my money would allow me to go.

(Testimony of John H. Wents, Jr.)

Q. As far as your money would allow you to go.

A. Yes.

Q. Until your money ran out? A. Yes.

Q. And how long did you go to Stanford?

A. I finished in the year 1927 in Stanford, in June, 1927. I had entered in 1923.

Q. In 1923? A. In October.

Q. Did you, after that, have any further opportunity and did you pursue any further your studies in engineering, or petroleum, or geological engineering?

A. Yes. Immediately upon leaving Stanford I went to work as a geologist in the research and valuation department of the Marlin Oil Company. I continued there for two years. Then I went to work for the Associated Oil Company.

Q. I was just covering the subject of your schooling.

A. I entered U.S.C. in extension work in 1935 and was in continuance attendance there in extension work to 1939, sometime in 1939.

Q. What courses were you taking there?

A. Graduate work in geology and petroleum engineering.

Q. Did you graduate there?

A. No, I did not. I did not take a degree. [640]

Q. Were you continuously at your studies there from 1934 to 1939? A. Yes.

Q. Have you ever been associated with any oil or gas development in Northern California?

A. What do you classify as Northern California?

(Testimony of John H. Wents, Jr.)

Q. Well, that is a good question for you Los Angeles people to ask us.

Well, as the gentleman spoke of here, let's start with Kern County and the Coalinga Field, and come north from there and go up to the State line in Oregon.

A. Well, I have done work in Fresno County, which is north of Kern County fields. Then I skipped the territory between there and, say, Northern California and did considerable work in Oregon.

Q. In Oregon? A. Yes.

Q. But north of Fresno you have not been associated with any oil or gas development in California?

A. With exception of the Riverdale field and the Helm field in the vicinity of Fresno, I have worked in those fields.

Q. Didn't you do some work for the Savage Oil Company in California at one time?

A. Yes, I did.

Q. Where was their development?

A. Their development was in Shields Canyon.

Q. Where is Shields Canyon?

A. Ventura County.

Q. Did you have a part of that development?

A. Did I have a part of it?

Q. Yes. A. I took part in it. [641]

Q. You were one of the developers, were you?

A. My father was the developer and I was associated with my father, yes.

(Testimony of John H. Wents, Jr.)

Q. How did that Ventura development pan out?

A. Panned out very unfortunately for us.

Q. What happened to that company?

A. It went into receivership.

Q. Went bankrupt?

A. Yes, and I had to pay off all the obligations.

Q. Did you mention that you were also connected with the Diversified Royalties?

A. I didn't in a list of my work. I was connected with Diversified Royalties, yes.

Q. Were you the consulting geologist or engineer for Diversified Royalties?

A. No. I was employed as a geologist, as a valuation engineer directly under the Diversified Royalties, not as a consultant.

Q. When?

A. Between 1934 and 1938.

Q. Between 1934 and 1938? A. Yes.

Q. That was a widespread operation in royalty dealings, was it?

A. Yes. I appraised, as I say, probably a thousand or more properties for that.

Q. For the Diversified Royalties? A. Yes.

Q. How many did that company come out?

A. I understand that about a year or a year and a half after I left their employment they went into receivership.

Q. They went into receivership? A. Yes.

Q. Now, sir, you also referred to the fact that you had been [642] engaged by the Attorney General's representative in the Southern California

(Testimony of John H. Wents, Jr.)

Land Office to make some studies and appraisals down there? A. Yes.

Q. In connection with a case that you said there were various owners involved; is that true?

A. Well, in most of the cases there was a variety of owners.

Q. Did you appraise and report to the representative in the Land Office down there your view of the properties in which——

A. Which properties are you referring to?

Q. The property in the case you were talking about.

A. I talked about a number of them.

Q. The case for the Lands Division?

A. Yes, yes, I have.

Q. Did the Lands Division representative down there represent your view of the property in the Sam Block case? A. Yes.

Q. You appeared and testified for the Lands Division in that case? A. Yes.

Q. And the Government lost that case, didn't they? A. They did.

Q. It is now on appeal?

A. It is on appeal, yes.

Q. In this Murac Bombing Range, you said they also sent you out into that field A. Yes.

Q. Was that an oil or gas field?

A. That was the appraisal of rotary clay. [643]

Q. Was it the appraisal of oil and gas fields or property claiming to have oil or gas upon it?

A. No, clay potentialities only.

(Testimony of John H. Wents, Jr.)

Q. Clay potentialities only? A. Yes.

Q. In other words, it did not involve anything in the field of oil or gas? A. No, it did not.

Q. Mr. Wents, when did you first see this property?

A. I believe it was December 27, rather than December 26, as Mr. de l'Eau testified, because I came up with him at that time, and we left Los Angeles the night of the day following Christmas, so we arrived there on the 27th.

Q. So our record will be clear, was that 1944?

A. 1944.

Q. Not 1943, the year of the first drilling over there? A. No, it was not.

Q. Are you and Mr. de l'Eau associated?

A. We were associated engineers on this particular appraisal, and we have associated on other appraisals.

Q. I mean, do you office together or do you have separate headquarters?

A. Mr. de l'Eau makes use of my office.

Q. He works out of your office?

A. He uses my telephone facilities and office facilities, but the connection is not one of a partnership or anything like that.

Q. Coming to your conclusions of value in this case, you said that you predicated your views on the findings of Mr. de l'Eau and Mr. Norris, did you?

A. I said that that was a part [644] of the things I predicated my values upon.

(Testimony of John H. Wents, Jr.)

Q. Is it fair to assume that you consulted with these gentlemen in your investigation and in coming to your conclusion?

A. Absolutely, I consulted with them.

Q. And you consulted with respect to the factors that might or might not exist in the property to make it a commercial gas property?

A. I consulted with them and formed my opinion.

Q. Did you agree with their findings as they discussed them with you?

A. Basically I agreed with their findings. Some small findings which were negligible, those things we did not agree on.

Q. Do you, too, hold the view that this property made a commercial gas discovery there in 1944?

A. Commercial gas was shown, in my opinion, by the blowout of 1944.

Q. Is that the factor that leads you to conclude that there was a commercial gas deposit present and exposed in 1944?

A. No, not necessarily.

Q. Maybe I misunderstood you. Will you read the last few questions and answers?

(Record read.)

Q. (By Mr. Bourquin): I do not know whether I understand you, Mr. Wents. Did you conclude from the fact that the well experienced the blowout in 1944 that there was a commercial gas deposit present?

A. I concluded that there was a [645] possibility of commercial deposit beneath these lands.

(Testimony of John H. Wents, Jr.)

Q. From the occurrence of the blowout?

A. No, from the sequence of events preceding that blowout, from the formations which were penetrated in the well, from the gas shows which were had higher up in the well and tested, and from the fact that the last core in that hole still showed that they were in marine formation, and as long as we are in marine formation, whether the depth is 4,000, 10,000, 12,000 or even 15,000 feet, we still have a possibility of commercial production, and we evaluate on those possibilities in the oil business.

Q. In other words, then, so we will understand, are the valuations that you have stated here in court today valuations based on a possibility of a commercial gas deposit there?

A. My valuations are based upon what a buyer and seller might agree on and the price, both being familiar with the subject matter.

Q. Did you come to any conclusion further than a possibility of a commercial gas deposit there?

A. That is enough to warrant us in the oil business——

Q. Please answer yes or no?

A. Will you read the question?

(Question read.)

A. I came to the conclusion that there was a possibility for a commercial gas deposit underneath these lands. [646]

Q. Was that as far as your conclusion went, that there was merely a possibility of a commercial gas deposit underneath these lands? Can you answer yes or no?

(Testimony of John H. Wents, Jr.)

A. I will answer that yes.

Q. That is as far as you go, that it was a mere possibility that the sequence of events up to and including the blowout indicate only a possibility of a commercial gas deposit in the lands, is that correct?

A. May I explain my answer?

Q. Can you answer yes or no and then explain?

The Witness: Would the reporter read the question?

(Question read.)

A. The answer is yes, but I would like to explain, your Honor.

The Court: Very well.

The Witness: No geologist has the power of predicting what will actually be in the formations that we encounter in the drilling of an oil and gas well. That is, until those formations are uncovered, any geologist who says when he looks over a piece of land that there is oil there at such and such a depth is making an assumption and should not be called a geologist. We are hired as technical men to rate the possibilities and to evaluate those possibilities. That is our profession.

Q. In other words, you would agree that no one would be warranted [647] in diagnosing a commercial gas deposit in the land from near surface surveys, is that true?

A. That he is warranted in diagnosing the possibilities, but not the actuality.

Q. That is what I was getting to: in other words, so we will understand here, we are dealing

(Testimony of John H. Wents, Jr.)

not with—what do the French say—a fait accompli, a fact accomplished, but we are dealing with a possibility only, is that it?

A. A possibility, yes, to the extent, however, that that possibility was stronger than the usual situation which leads us to even commence an oil well or a gas well.

Q. In other words, can we gather from that that with the sequence of events and the facts that had been encountered in those two explorations in 1943 and 1944, you felt that with the blowout in 1944 conditions had been shown that would warrant an exploration for a commercial gas deposit, is that true?

A. Yes. I would like to carry my answer “Yes,” further, however.

Q. All right.

A. With the conditions which transpired just previous to my being called in on this case—in other words, the blowout—I think that everything would point to the fact that that hole should be carried down and a test made of that horizon. If that horizon did not indicate or show on that test commercial production, there were still other possible horizons below it which should be tested. [648]

Q. In other words, it is your view that with the facts before them, including the blowout in 1944, they would have still been warranted in exploring further, is that true?

A. Yes, exploring and testing.

Q. That is your view of the property under the

(Testimony of John H. Wents, Jr.)

facts and circumstances that you note from your examination of the log and your own studies, is that it? A. Correct.

Q. Mr. Wents, let us turn to these figures that you gave us or the theme of the figures that you gave us on valuations. Will you turn to your index, please? A. I have turned.

Q. You testified that the Cal-Bay lease of the 158 acres of Mary Faria that were not taken—in other words, that were outside the fence—had been damaged by the Government taking the remainder of the lease on the Mary Faria property, is that true? A. That is true.

Q. And so we will know what you are talking about, I will ask you if it is correct, does this outline the Mary Faria acreage that was not taken, or does it run across?

A. No, it runs here (indicating).

Q. It runs to here? A. This line.

Q. Let us start with the fence. This horizontal line that falls to the middle and rises again on the map—and this is Defendants' Exhibit 33—marks the Government fence, does it? A. Yes.

Q. The parcel limits? A. Yes. [649]

Q. Outside of that fence there remained in the acreage of Mary Faria 158 acres as I outline them here?

A. I want to be very sure of that. This line (indicating).

Q. Let me outline that. It will come up from the fence here, rise to the top of the map along

(Testimony of John H. Wents, Jr.)

this line, cut across Parcel 59 on the dotted line, and return to the fence, comprising 158 acres. You testified that that property, the lease in that property has suffered damage because the Government took the balance of the Mary Faria acreage that he conditioned a lease on; that is true, isn't it?

A. Yes, it is true.

Q. Let me ask you this, so we will follow that: How much would you estimate the total acreage of Mary Faria, that is, the Cal-Bay lease in the total acreage of Mary Faria, 367.36, would be worth in market value as of January 15, 1945?

A. The three——

Q. Treat it as 367 or 368, if you will.

A. The full 367.36 acres, not including the well which was on there, would have had a market value of \$312,256.

Q. How much an acre?

A. That would be \$850 per acre.

Q. \$850 per acre is what you would say in the market the leasehold in the Mary Faria piece was worth on January 15, 1945, is that correct?

A. Yes.

Q. What would you say would represent the market value of 368 acres in the Mary Faria piece, the leasehold value in it of Cal-Bay? I will withdraw that. What would you say was the [650] market value as of January 15, 1945, of the Cal-Bay lease in the 158.5 acres of Mary Faria that was not taken? A. \$95,118.

Q. \$95,118. How much an acre?

A. \$600 an acre.

(Testimony of John H. Wents, Jr.)

Q. So we can find an equation, can we follow from that that the leasehold in the remaining acreage, 158 acres, was depreciated by the taking in the sum of what? Around \$200 an acre?

A. Around \$200.

Q. What is the basis for your view that that leasehold in the remaining acreage suffered that damage? A. The reason?

Q. Yes.

A. There are a number of reasons.

Q. Will you give them to us, please?

A. In the first place, the tract was reduced in size materially.

Q. What?

A. The tract of land, by virtue of the taking, was reduced in size materially.

Q. The Mary Faria tract was reduced in size materially?

A. Yes. The well which had been located upon there, which was in the process of drilling or being worked upon before the taking, had erased. The well was not present then. Geologically in my opinion, the land which remains is of lesser value than that which was taken.

Q. Well, now, let's see. Mary Faria still has, outside the arsenal that the Cal-Bay still has a lease on, 158 acres of the acreage that was Mary Faria's and still is? A. That is correct. [651]

Q. How big an acreage does it take to establish a well?

A. We can establish a well on a tract of land probably one hundred feet by one hundred and fifty feet.

(Testimony of John H. Wents, Jr.)

Q. That would be what? A half-acre?

A. That is less than half an acre, I believe, but if all our activity was conducted on such a density, it would be a very losing proposition as to the operator, because he could not afford the economic investment of drilling on that density.

Q. You say if all your activity was confined to what?

A. A small tract of land. You have to have a big tract of land to drill an oil well.

Q. You mean you have to have room to work?

A. No, not room to work. You have to have room for reserves. When we drill an oil well we expect to make a profit out of that venture, and our profit out of a drilling venture, a completed oil well, is dependent upon the amount of oil or gas which that well will produce, which in turn is dependent upon the thickness and the saturation of the formations. There are many factors going in to explain well densities and spacings.

Q. That brings us to the point. Could you reach this supposed commercial gas structure by a well on Mary Faria's remaining 158 acres?

A. We might be able to do that. May I go on a little further there, your Honor? The question as he asked it was, could we. We could commence a well right where I am sitting here and bottom it under the City Hall [652] without any difficulty at all. We can do lots of things in the drilling of a well. However, I do not think the Government would stand for us commencing a well on the Mary

(Testimony of John H. Wents, Jr.)

Faria property which remains and bottoming it under their property.

Q. What is that? You do not think the Government would stand for it?

A. No, that is trespass.

Q. Bottoming it on their property, you say?

A. Oh, yes.

Q. You mean if you went in Mary Faria's land and drilled to get at the same point as the old well, there could be an objection, is that what you mean?

A. There would be an objection, very likely.

Q. How big is this structure, in your estimation? Don't you agree with Mr. Norris and Mr. de l' Eau that there was a wide structure under there?

A. I agree with Mr. Norris and Mr. de l'Eau to the extent that the structure appears to be large. Now, to date the structure has been expressed as the result of surface observations. We can't conclude everything from surface observations. Our structures are not outlined until we have them developed. The closer to a well which has shown signs of gas, the more logical the expectancy of gas production.

Q. What kind of qualities are you attributing to that 158.53 acres up there on the top of the hill outside the fence from which you tell us that before the taking of the property inside it was worth \$800 an acre and afterwards was worth [653] \$600. Certainly not farming?

A. May I explain that?

Q. You can answer it quite fully?

A. Yes, I would like to answer that quite fully.

Q. Yes.

(Testimony of John H. Wents, Jr.)

A. For example, it is very common in our business to——

Q. I want you to answer the question. What qualities are you attributing to the 150 acres of Mary Faria outside the fence?

A. Proximity of production, possible [653-a] production.

Q. Possible production. Are you attributing to it qualities, holding qualities for exploration and exposure of oil or commercial gas?

A. Future drilling in case it is wanted.

Q. How about that Alvernaz property? The Alvernaz property, none of that was taken by the Government, was it?

A. No, it was not.

Q. Not even a fraction of an acre, is that correct? A. Correct.

Q. So we will have it before us, does the property that lies to the north, if this map is placed with the north to the top——

A. The section lines are relatively north and south.

Q. Relatively north of the Faria piece, and I will outline it like this (indicating), 310 acres. It runs down in this corner. A. Yes.

Q. Would you say that that property, too, suffered damage, was damaged in value because of the taking of the property inside the fence?

A. I do.

(Testimony of John H. Wents, Jr.)

Q. What was the market value of the Alvernaz property in July, 1944, the 310 acres.

A. 316 acres.

Q. 316 acres.

A. Worth \$108,500, or at the rate of \$350 per acre.

Q. How much, in your opinion, was its market value after the Government took the property to the south of it.

A. I am sorry. There is a typographical error. 310 acres. After the Government took the property the 310 acres was worth \$31,000, or [654] \$100 per acre.

Q. In other words, because the Government took this property and closed in the fence, without touching it, it is your view that the Alvernaz property outside was depreciated to the extent of \$200 an acre, is that true? A. It was.

Q. Are we talking now about the leasehold value? Is that what you are speaking of in terms of leasehold value? A. The leasehold value, yes.

Q. I wish that you would tell us what was the market value of the mineral rights, if any, in the Alvernaz 310 acres as of July, 1944, without breaking it into leasehold and royalty.

Mr. Scampini: May it please the Court, I object to the question on the ground the issue before the court is the valuation of leaseholds and royalties, and not mineral rights.

Mr. Bourquin: This would apply to unit value, but it would also test the witness' opinion, your Honor.

(Testimony of John H. Wents, Jr.)

The Court: I think it is proper cross-examination on the general subject the witness has testified to. Overruled.

Mr. Scampini: Then may I ask what mineral rights are referred to? Do you mean oil, natural gas, gold or silver?

The Court: I think he means whatever is in the ground as a whole before it is split up into interests. Is that what you mean?

Mr. Bourquin: Yes, your Honor.

Mr. Scampini: If it please your Honor, I raise the further [655] objection that this witness testified he has appraised the minerals in the ground on the basis of oil or natural gas but no other minerals, and I think we should limit it to that extent.

Mr. Bourquin: If he does not know of any others there, he does not have to bother with them.

The Witness: It is customary to appraise the two items separately because they have a separate market and in the matter of leases or royalty interests, we must go—that is unproven—we must go to market value for our answer.

Q. (By Mr. Bourquin): I will allow you to do that, but to test your viewpoint we would like you to tell us your opinion of the market value of the 310 acres of Alvernaz, including all of the oil and gas, if any, in the ground as of July, 1944.

The Court: I think what the attorney wants you to evaluate Mr. Wents, is assuming there wasn't any lease, somebody came along and wanted to buy the

(Testimony of John H. Wents, Jr.)

whole thing, what would he pay for the oil and gas in the ground? 100 per cent of it.

The Witness: The fair market value.

The Court: Is that what you want to find out?

Mr. Bourquin: Yes, thank you.

Mr. Scampini: I think that clears the record, your Honor, and I thank you.

The Witness: That was before?

Q. (By Mr. Bourquin): Yes, before the Government took the property to the south of it.

A. I would say between \$125,000 [656] and \$150,000.

Q. What would your opinion of the market value of the oil and gas rights in that 310 acres of Alvernaz be immediately after the Government took the property to the south of it in July, 1944?

A. I would be less.

Q. What would it be? Around sixty, \$70,000?

A. Yes.

Q. About half would you say? A. Yes.

Q. In other words, because the Government took the property near it, the property was depreciated in value \$65,000 to \$85,000?

A. Yes, because the purchaser, a knowing purchaser, would have considered that that property would have been explored by the continuance of the work on the Cal Bay sale, and he would have been willing to pay a higher price for that land had that well been allowed to be completed. That causes the difference.

Q. Your basis is that the owner would have

(Testimony of John H. Wents, Jr.)

information that would result from the continued exploration of the Cal Bay well?

A. The increase in value, yes.

Q. After the Government took this property, Mr. Wents, how much property did the Cal Bay have left to it outside the fence?

A. I believe it was 468 and approximately a half acre.

Q. In your opinion how many locations would the 468 acres remaining to it afford with which to continue the exploration or development of the proposed gas structures in the Cal Bay property?

A. Will you read that question? [657]

(Question read.)

A. The answer is from 1 to many.

Q. How many?

A. I don't know how close you would want to come. If there was no oil at the first location or no gas they probably would not drill any more. If there was oil or gas in the first one they probably would drill additional. So I could not answer that unless I had some knowledge of production.

Q. Did you ever discuss that matter with Mr. Norris?

A. I would not need to discuss that with Mr. Norris.

Q. Did you? A. No, I did not.

Q. Did you ever discuss that with Mr. Norris?

A. No, I did not.

Q. You do not know what his views were on that? A. No.

(Testimony of John H. Wents, Jr.)

Q. Do you know whether he made any representations either to Mr. Faria or the Corporation Commissioner with respect to the continued development of the 468 acres remaining to Cal Bay?

A. I know of none.

Q. You know nothing of that? A. No.

Q. You never heard it mentioned? A. No.

Q. Never discussed it with anyone?

A. No, sir.

Q. You have not discussed that with counsel?

A. No, I have not.

Q. Let me ask you, so I can understand your view a little better, would give us your opinion as nearly as you can of the market value of the Cal Bay lease in the 208.83 acres taken? That is the one piece that the well is on, isn't it?

A. Yes. [658]

Q. Is that the piece the well is on?

A. That is 208.83 acres, yes.

Q. Give us your opinion as nearly as you can of the market value of the Cal Bay lease in the 208.83 acres taken from the Mary Faria piece as of July, 1944. A. Including the well?

Q. Yes. A. \$411,500.

Q. That is of July, 1944? A. Yes.

Q. That is as of a period of time before any of the 1944 exploration was done?

A. That is true.

Q. In other words, it is your opinion that the market value of that property of the Cal Bay lease in the Mary Faria 200 acres that was taken was just

(Testimony of John H. Wents, Jr.)

as much before the 1944 exploration was undertaken as it was after the blow-out and the abandonment?

A. It actually may have been more. May I explain?

Q. Yes.

A. For the simple reason that the condition of the hole as of the time of July was much more favorable for conducting tests than it was as of a later date, the later date, the blow-out date. As a consequence, in the expenditure of money on the operation of a property, we consider what we have got and what we have to spend to justify our investment.

Q. In other words, it is your opinion that in July, 1944, before the 1944 exploration was undertaken, the Cal Bay lease in that property may have been worth something more in market value than you held it to be on January 15, 1945?

A. It may have, yes. [659]

Q. Let's carry that one step further. What is your opinion of the market value of the Cal Bay lease of the 208.83 acres of Maria Faria, taken as of October 28, 1943?

A. There is no material change from the price I have given before.

Q. Still worth as much?

A. Let me look according to the log. No material change.

Q. In other words, again you would say that the leasehold interest in the Maria Faria piece, upon

(Testimony of John H. Wents, Jr.)

which the well is located, was worth as much in the market on October 28, 1943, as it was on January 15, 1945; is that true?

A. Yes, that is true.

Q. That is true. Then your opinion follows the same equation with respect to the other properties included in the taking?

A. I don't think there is any change in value between the dates you have mentioned.

Q. So we can settle the matter now, is it your opinion that the leasehold of Cal Bay lease in the properties that were taken was worth as much in terms of market value on October 28, 1943 as it was on January 15, 1945? Is that your opinion?

A. It is.

Q. You do not feel that the explorations of 1944 and the incidents of it had any effect on the market value of that lease, at all; is that it?

A. They might have had, but they were offset by the unfortunate trouble which developed.

Q. Now, on the subject of that well, have you, in evaluating, expressing an opinion of the value of the lease in that Maria Faria piece, where the well is, or, in your opinion, the Maria [660] Faria royalty interest in that same piece, have you included or ascribed any value or any part of the value to the presence of the well? A. Yes.

Q. What part of your value in, first the leasehold, would you say you ascribed to the presence of the well? A. A good portion.

(Testimony of John H. Wents, Jr.)

Q. How much? A. At least one-half.

Q. Have you a figure?

A. That is not—that is excluding the cost of the well, itself.

Q. I just want you to tell me what you——

A. Excluding the cost of the well, itself, the land is appreciated by virtue of the fact the well is located there by approximately one-half.

Q. You are now talking of depreciating this property not taken. I am dealing with——

The Witness: Property taken, I was referring to.

Mr. Bourquin: Yes, yes.

Q. How much of the \$411,503 that you ascribe to the leasehold in the property taken of Maria Faria do you relate to the well?

A. Directly to the well, \$234,000.

Q. What do you base it on?

A. The cost of the well.

Q. The cost of the well. Well, in other words, is it correct to say that you have appraised the leasehold interest of Cal Bay in the 208.83 acres at one figure and then added to that the cost of the well to complete your total value of the leasehold in that property?

A. I had to do that. That is my method of [661] approach.

Q. That is what you did, is it?

A. Yes. For want of any other means that was required.

The Court: Have you much more Mr. Bourquin?

Mr. Bourquin: Well, I believe if your Honor is

(Testimony of John H. Wents, Jr.)

prepared to take a recess it will enable me to get down on the ground with this witness and I may be able to finish up very shortly tomorrow morning.

The Court: I think perhaps that would be better. I am going to do that. We will take the recess now, ladies and gentlemen, in this case until tomorrow morning at ten o'clock. In the meantime please continue to follow the admonition which I have heretofore given you. We will adjourn until tomorrow morning at ten o'clock.

(An adjournment was here taken until tomorrow, Friday, July 31, 1947, at ten o'clock a. m.)

Friday, January 31, 1947

10:00 o'Clock A.M.

The Clerk: United States of America vs. Certain Land in Contra Costa County; on trial.

Mr. Scampini: Ready.

Mr. Bourquin: Ready.

JOHN H. WENTS, JR.

recalled.

Cross-Examination

(Resumed)

Mr. Scampini: We have a juror missing.

The Court: Before we proceed in the trial of the case, the clerk informs me that Mr. Beine, one

(Testimony of John H. Wents, Jr.)

of the jurors, Juror No. 7, the juror is ill and could not be here this morning. Now, if there is no objection, I think we ought to complete the panel by putting the alternate, Mrs. Painter, regularly in the box.

Mr. Bourquin: No objection from the Government.

Mr. Scampini: No objection.

The Court: Very well. The order will be that Mrs. Painter will become part of the regular panel. I wonder if you would sit over there, Mrs. Painter, where Mr. Beine sat; then we will be able to keep our record of the positions of the jurors correct.

Mr. Bourquin: Shall we proceed, your Honor?

Q. (By Mr. Bourquin): Mr. Wents, the property of Geraldine Faria was not, is not included in the Cal-Bay lease; is that true?

A. That is true. That is Parcel 64, is it not?

Q. I believe it is 64. A. Yes.

Q. In other words, her property was covered by the lease at the time of the taking and since held by Joseph Faria, himself? A. That is true.

Q. The taking of the property by the Government in this case resulted in cutting out .65 of an acre of the property of Geraldine Faria; that is true, is it? A. That is true.

Q. You voiced the opinion that severance damage to that parcel 64, the property of Geraldine Faria, had resulted from the taking in the sum of about \$26,000?

A. That is what I testified to.

(Testimony of John H. Wents, Jr.)

Q. Do you base your opinion of damage to that parcel of land by the taking away from it of the .65 of an acre?

A. That is part of it. I based my opinion on other parts besides that.

Q. On other parts?

A. The removal of the well which was upon adjoining acreage. That is one of the principal considerations in it.

Q. In other words, in forming the opinion that that parcel had been damaged \$26,000 by the Government's condemnation here, you depend, or, rather, you reason that that damage accrued [664] because the Government took other property than her property?

A. It took her property, too.

Q. It took .65 of an acre?

A. Yes, that is true.

Q. Possibly it is a way of clarifying it, what damage would you say accrued to the property of Geraldine Faria by the taking of the .65 acre of it in the corner that I am pointing to here?

A. What was that question?

The Court: Read the question, Mr. Reporter.

(Question read.)

A. The value of that property which was taken, the .65 of an acre, I appraised at \$175.

Mr. Scampini: I think the witness has misunderstood the question.

The Witness: And the severance I appraised at \$26,200, a total damage of \$26,375.

(Testimony of John H. Wents, Jr.)

Q. (By Mr. Bourquin): You valued the .65 of an acre that was included in the Government taking from her property at \$175? A. Yes.

Q. What damage did you conclude the remainder of the 228½ acres suffered by reason of the taking of the .65 of an acre from it?

A. \$26,200 in damage to the rest.

Q. \$26,200? A. Correct.

Q. Will you explain to us your theory of that damage relating to her acreage from the taking of the .65 of an acre?

A. My theory of the damage that resulted to the Geraldine Faria [665] property as a result of the taking of the .65 of an acre was one which the Geraldine Faria property was tied in with the Mary Faria property and also to other properties in there in so far as the Faria well was concerned. In other words, the operations on the Faria well complied with the drilling requirements on this property, as well as the drilling requirements on the Faria property, so the taking of that well is what caused this property to suffer the damage that I assigned to it, more than the actual severing of the piece, of that .65 of an acre, or the taking of the .65 of an acre.

Q. How do you allocate the amount of the damage that you conclude was suffered between that caused by the taking of the .65 of an acre and that caused by the taking of the property from her upon which the well was drilled?

A. I allocate a reduction in the worth to her property.

(Testimony of John H. Wents, Jr.)

Q. How do you allocate or break it up for that?

Mr. Scampini: I assume, Counsel, for the purpose of the record, that every time the word "properties" is being used in this case we are talking about the leasehold estate, aren't we, in the property of Geraldine Faria and the leasehold estate of Joseph Faria on the property of Geraldine Faria?

Mr. Bourquin: Well, the value that he gave he attributed to leasehold on that particular piece of property.

The Witness: That was what I was talking about.

Mr. Bourquin: Yes. [666]

The Witness: Before the take, the value of the Geraldine Faria leasehold on the 228.55 acres was \$45,710, or a value of \$200 an acre. After the take the value of that leasehold was \$50 an acre, or \$11,395.

Q. Yes, Mr. Wents. I remember you said that yesterday, but what we would like you to tell us, please, is how much of the twenty-six thousand you say the lease of Geraldine Faria's acreage was damaged is chargeable to the taking of the .65 of an acre from it.

A. I never calculated that.

Q. How much of the damage to Geraldine Faria's acreage which you concluded was \$26,000, is chargeable to the taking of the property upon which the well was drilled?

A. The greatest proportion is chargeable to the taking upon which the well was drilled.

(Testimony of John H. Wents, Jr.)

Q. Then give us some idea of the proportion between the .65 of an acre and that chargeable to the taking of the property upon which the well was drilled?

A. Oh, it is the greater proportion by far. I would say 90 per cent.

Q. 90 per cent. In other words, shall we assume that if we were to deal with the taking of the .65 alone you would say that her damage to the 228 acres remaining would amount to about \$2600 instead of \$26,000, 10 per cent?

A. That would be closer. It might even be less than that.

Q. It might even be less than that. Your map doesn't present to us, it may be presented on it, any clear outline or distinction [667] between the two leases, the leases of the Cal-Bay Corporation and the leases of Joe Faria?

A. Yes, it does.

Q. Can we outline it?

A. The leases of Joe Faria are colored in yellow on this map and outlined in yellow, colored or outlined (indicating). That was a part taken there. This is the balance of the lease (indicating).

Q. Will you tell me if I am correct, please: The Cal-Bay lease is the lease which will be outlined or would be colored in green and bordered in green?

A. Yes.

Q. Running about the fashion that I have traced on the diagram?

(Testimony of John H. Wents, Jr.)

A. Your tracing has followed it along this line,

Q. And including the property upon which the well is situated? A. That is true.

Q. But not including any of the property of Geraldine Faria?

A. No. That is, to my knowledge.

Q. That is the Cal-Bay lease. Now, the Joseph Faria lease, you say that consists of the property shaded in yellow and bordered in yellow. Would that be about this fashion that I trace here on the diagram?

A. There may be some question in that extent, because I understand that this, the Bollman parcel, there was some question about title.

Q. Well, let's skip the Bollman piece and see if we can trace out the shaded yellow and bordered yellow which would run in the fashion I have indicated with my hand. A. Correct.

Q. That would also include this Parcel 71 over here on the [668] easterly end of the diagram?

A. That is correct. That was taken, that was outlined by the yellow through the balance of the property.

Q. That is outlined in the balance; I see. Initially, all of those properties were in the separate ownerships, such as you have spoken of here, Dutra, Mary Faria, Geraldine Faria, Ed Faria, Mac Roche and Joe Chavez; is that correct?

A. Originally, each of the parcels was in the ownerships you named.

Q. They were separate *identifics* originally?

A. They were.

(Testimony of John H. Wents, Jr.)

Q. In 1941 or thereabouts, Joseph Faria consolidated that leasehold interest in himself, didn't he? A. That is true.

Q. Created an estate in Joseph Faria?

A. Yes.

Q. In late 1941, or whatever it was, Joseph Faria severed that estate, didn't he?

A. He divided his holdings, yes.

Q. He severed it by assigning the portion bordered in green and shaded in green to Cal-Bay Corporation? A. Yes.

Q. Having then once severed them, how do you explain, attribute another severance to the taking of the property in green as against the property in yellow?

A. There can be a continuation of severances, a chain of severances, as far as that goes. I am appraising as of that date. I could probably have appraised as of the date of the original severance but that doesn't change it. It is the same as other subdivisions.

Q. As far as the basis of your conclusion of damage to the properties, [669] severance damages to the properties in the Joseph Faria lease and not included in the Government taking, that is the basis?

A. I am considering the severance which occurred as of the Government take.

Q. In other words, the basis of your reasoning or opinion that severance damage accrued to properties in the Joseph Faria lease not included in the Government take is that although they had

(Testimony of John H. Wents, Jr.)

been once severed, you have a theory that no other severance occurred when the Government taking took effect?

A. I have a theory that another severance took place when the Government taking took effect.

Q. In other words, if we were to follow that out, Mr. Wents, that theory or reasoning, Mr. Wents, you would say by the same equation that any property which could be said to overlie this supposed structure, whether owned by the Faria group, or not, had suffered damage by the taking by the Government of the property upon which the well was located?

A. That is true as far as it pertains to the acreage upon the structure which had demonstrated the gas; that is, in the Faria well. That is very true.

Q. You are proceeding on a theory that Joseph Faria and Cal-Bay Corporation are one and the same thing, are they?

A. No, I am not considering them one and the same thing.

Q. You would recognize a separate identity there and the leases would recognize or require—

A. I recognize separate [670] identities. I recognize there are other ownerships there, too.

Q. Your theory is that when the property upon which that well was being drilled was taken all the surrounding property that might overlay the supposed structure then and there suffered a money damage?

A. Yes.

(Testimony of John H. Wents, Jr.)

Q. Whether included in this suit, or not?

A. Yes.

Q. The same reasoning applies, does it—Well, I will put it this way: You support your conclusion of damage to 71 acres, I will say to the balance of the 71 acres of Mary Faria that was not included in the 73 acres. A. It does.

Q. It was not included in the Cal-Bay lease or assigned to Cal-Bay, but was retained by Joseph Faria in his yellow part? A. Yes.

Q. Mr. Wents, have you related or included any portion of the cost of drilling that well to any other leasehold parcel valued by you other than Parcel 59, Mary Faria?

A. No. I include the cost in that particular parcel.

Q. You put the total cost of the well in your opinion upon the Mary Faria parcel, the green part? A. Yes. [671]

Q. And I assume that cost was what, that figure of cost of \$234,000? Was that one that you took from the books of the corporation?

A. That was furnished to me by an auditor of the corporation. A greater figure was furnished to me than that. From the larger figure I subtracted a certain sum that I did not believe was applicable to the cost of the well.

Q. What did you believe was not applicable to the cost of the well?

A. The commissions on the sale of the stock.

Q. The commissions on the sale of the stock?

A. Yes.

(Testimony of John H. Wents, Jr.)

Q. How much did you deduct from that item?

A. It was either \$43,000 or \$47,000. I forget which. I think it was \$282,000—

Q. Can you get your notes, please?

A. Yes, I can. Well, it was roughly \$282,000 invested in the well, that is, the total cost, according to the audit, of which approximately \$48,000 was commission.

Q. So you took off about \$50,000 and let the rest represent the cost, which you added to your opinion of the value of that appraisal to represent the value?

A. Yes, that is what I did.

Mr. Bourquin: That is all from Mr. Wents. Your Honor, I may say at this time that as the appropriate time I desire to address certain questions of law as to your Honor pertaining [672] to the subject matter we just covered, but if your Honor and Counsel are agreeable I will reserve that until the time we generally review the law.

Redirect Examination

By Mr. Scampini:

Q. Mr. Wents, referring you to the case of United States vs. Block, reference to which was made by Mr. Bourquin on his cross-examination of you, will you please state in what capacity you served or acted in that case?

A. I acted as an expert for the Federal Government, the Lands Division, an expert geologist and petroleum engineer and appraisal engineer.

(Testimony of John H. Wents, Jr.)

Q. Did you make any valuation of the property which was the subject of that action for the Government of the United States?

A. I made an appraisal.

Q. Did you testify in court with respect to the value of the property which was the subject of that action?

A. I did.

Q. And you testified, as I understood, as one of the Government experts, is that right?

A. Yes.

Q. What value did you place upon the property which was the subject of that action?

Mr. Bourquin: I object to that as irrelevant and immaterial, your Honor.

Mr. Scampini: If it please the Court, reference to the case has been made by Counsel, and the witness was also asked, "Is it not true that the Government lost the case?" I now [673] propose to prove that the value which the witness placed on the property was deemed by the jury to have been so low in value that the jury granted a much higher value than his appraised value.

The Court: I think that is what Counsel meant when he said the Government lost the case.

Mr. Bourquin: I do not think it is proper re-direct examination.

The Court: Have you any objection to that?

Mr. Bourquin: No, your Honor, if that is the situation.

Q. (By Mr. Scampini): On cross-examination, I believe you testified substantially to the effect that

(Testimony of John H. Wents, Jr.)

in your opinion there was not much change in the fair market value of the leasehold estates of Cal-Bay Corporation and Joseph Faria, Jr., between the period intervening from approximately October, 1943, to the end of 1944, is that right?

A. That is what I testified to.

Q. Upon what factors considered by you or reasons have you formed that opinion?

A. I formed that opinion for the principal reason I did not see myself compounding the shows, that is, the respective shows of gas in that well, and thereby bringing up the value just to a point of trying to estimate what the property might be worth developed. I had reason to believe from the shows which had been found at a depth of 4,260 feet, approximately, that this property had more [674] than reasonable possibility of being productive of gas, and I considered what a buyer would have paid for it in the light of all things. I did not appreciate it because of the latter show. Let me say that.

Q. I will ask you whether or not in the figures which you gave with respect to the fair value of these properties as of January 15, 1945, in respect to Parcels 58 and 59, whether those figures were at all influenced by the fact that a blow-out of gas occurred on November 29, 1944, on that same property? A. Not according to my figures.

Q. Mr. Wents, had the well been completed on Parcel 59, and that well had shown commercial production, what effect would it have had upon the market value of the property, in your opinion?

(Testimony of John H. Wents, Jr.)

A. The market value of that property, had that well been placed on production, would have been calculated on an altogether different basis. I had to calculate this property on comparative values with respect to the trading in properties on which the possibility of production or probability of production was had, not the actuality. I would have used a different approach entirely.

Q. What approach would you have used?

Mr. Bourquin: Your Honor, I will object to this as speculative, conjectural, and not proper redirect. He says supposing something transpired that did not transpire, what approach would you use. [675]

I think it is irrelevant and immaterial, speculative and conjectural.

The Court: It does get into the conjectural field.

Mr. Scampini: I will withdraw the question, your Honor, so as to save time. In arguing it I think we can approach the problem I am driving at in a different way.

Q. I will now ask you, Mr. Wents, had the well which was being drilled on the Mary Faria leasehold, Parcel 59, been allowed to be completed, and had that well shown commercial production, would your figures as to the fair market value of the property which you gave have been lower or higher?

Mr. Bourquin: I object to that, your Honor, as assuming facts not in evidence, speculative, conjectural, irrelevant and immaterial.

(Testimony of John H. Wents, Jr.)

The Court: I think the objection is good. I will sustain it. We are only concerned here with the value as is, as the appraisers say.

Q. (By Mr. Scampini): Did the fact that the Faria well blew out on November 29, 1944, have any bearing upon the values determined by you?

A. As I said before, no particular bearing. It confirmed my suspicion or my findings. That was all.

Q. In other words, as I understand your testimony, the results of 1943 were merely confirmed in 1944 at a lower level, is that correct? [676]

Mr. Bourquin: That is leading and suggestive, your Honor. I will withdraw the objection.

The Witness: Basically that is the thing.

Q. (By Mr. Scampini): Between a buyer desirous of buying these properties—and, of course, such a buyer would of necessity have to be one knowing the hazards and the risk of the development of property for oil and gas production—would that buyer have taken into consideration in arriving at the values which he would pay the results obtained in 1943, during the year 1944, clear down to the end of 1944?

A. What he would have taken into consideration I do not know, but I would imagine he would take into consideration all the facts up to the time of the purchase of the property by himself.

Q. In arriving at the values that you gave in this court, did you take into consideration any transac-

(Testimony of John H. Wents, Jr.)

tions involving substantially similar properties in a substantially similar course of development?

A. I did.

Q. Are you familiar with any such transactions?

A. I am.

Mr. Bourquin: Your Honor, this is not redirect examination. I am going to object to it on that ground. It is going into collateral matters, too.

The Court: I think it is not proper redirect examination, Counsel. I will sustain the objection on that ground.

Mr. Scampini: Very well, your Honor. [677]

Q. Based upon your studies of the subject properties and your knowledge and experience, would you have recommended during the year 1944 to any of your clients the purchase of these leasehold estates at approximately the values testified to by you? A. I would.

Q. Only one more question: You have examined, have you not, the leases which covered the properties which are the subject of this action?

A. That is one of the first steps in my investigation.

Q. And you know the terms and conditions of those leases, do you not?

A. I am familiar with them.

Q. Is it not true that each one of the leases covering the properties, let us say, of Mae E. Dutra, Edward Faria, Mary Faria, Geraldine Faria and Manuel V. Alvernaz contains a clause therein to the effect that the drilling of one well on any one

of these properties would validate the lease with respect to all the remainder of the properties?

Mr. Bourquin: Just a minute. I would like to have that question read, your Honor.

The Court: Of course, if the lease says that—

Mr. Scampini: It is a matter of record, your Honor.

The Court: You could just state it. I do not think the witness could state what is in the lease. I do not think that would be proper.

Mr. Bourquin: The question was, would a drilling on any [678] one of the Cal Bay leases continue the life of the Joe Faria lease. The leases are the best evidence.

The Court: If that is so, you can call it to the attention of the Court or the Jury at any time.

Q. (By Mr. Scampini): In determining the damage to the leasehold estate of Joseph Faria, Jr., in the Geraldine Faria lease, Parcel 64, did you take into consideration or give any weight to the clause found in that lease that I shall now read to you:

Mr. Bourquin: Counsel, to shorten this, are you referring to the fact that when Joseph Faria and Bud Hildebrand took all of the leases they contained a provision that commencing drilling within a year, or the extension of the period by agreement on any one of them would extend the life of all of them?

Mr. Scampini: That is correct.

Mr. Bourquin: We have not raised any question of the validity of the leases here on that subject. If this is to be used as a method of approaching

(Testimony of John H. Wents, Jr.)

the law on severance damage, then we raise the question, the legal question, that when Joseph Faria disposed on his Bud Hildebrand or his own leases to Cal Bay, he created a separate entity and a separate estate, and that this provision would not affect the rule of severance damages. We object to the line of testimony on that ground. [679]

Mr. Scampini: I think Counsel has misconstrued the clause found in the lease. It reads as follows:

“Any provision, or provisions in the lease notwithstanding, it is agreed that this is one of a series of leases in a general district, said district including Sections 15, 16, 17, 18, 21, 22, 29, 23, 26, 27, 28 and 35, in Township 2 North,”

which embraced all the properties outlined on the map on the board, your Honor, “there being leases with numerous property owners within said district, and it is agreed that if the lessee commences drilling operations within one year from this date on any of the land described in any of the leases held by the lessee with the owners of the property within the district hereinabove described, that such drilling operations shall constitute a full compliance with paragraphs 4 and 5 of this lease, and that drilling operations on the land so held shall be and constitute drilling operations on the land herein described for all intents and purposes.”

In other words, this is a community lease, your Honor; it is part of a community lease.

(Testimony of John H. Wents, Jr.)

The Court: I understand that. What is the question you are asking?

Mr. Scampini: I am asking of the witness a question whether in determining and arriving at his figure of the damage suffered by the leasehold estate of Joseph Faria, Jr., [680] in the Geraldine Faria lease, he took into consideration the clause found in this lease which provides in effect that the drilling of the Cal Bay well on the Mary Faria property validated the lease of Geraldine Faria and, of course, when that well was taken, there was no well with which to validate the Geraldine Faria lease. So there is a damage resulting by reason of the taking of that well to the leasehold estate, in that it would have to have another well drilled to keep the lease in full force and effect.

Mr. Bourquin: This is a reversal of the theory that Counsel has proceeded upon in his case. At the outset of his case the question of the validity of these leases came up and we conceded or offered to concede that the leases were in effect between the parties. Then he himself brought in the question of the Bollman lease and, as he put it, to validate that lease he understood to show that there was an agreement between Bollman and Joseph Faria, which Mr. Bollman was unable to support. That was his theory then. Now he is taking another theory. We are not making any question—we will state our initial position: we will concede that between these people they were one group. In one fashion or another they have kept the leases alive, so far as the life of the lease is concerned, but to

(Testimony of John H. Wents, Jr.)

employ the terms of them to circumvent the rule of severance damage is what we object to, if that is what it is designed to be for. These leases say if the lessee shall drill, it will continue. Now, the lessee did not drill; an assignee of the lessee drilled. But we do not raise the question of the validity of the leases, because the parties could make their arrangements between themselves. But to try to reconsolidate these properties that they once severed, we object. That is what this question is designed to do, to reconsolidate them. They cannot be reconsolidated unless it be admitted that Joseph Faria and Cal Bay are one and the same thing.

The Court: I do not quite understand that that is the question the witness is being asked.

Mr. Bourquin: I take it he is asking the witness, in response to the testimony of the witness on cross-examination that the taking of the Cal Bay property caused damage to any other property in the locality that might be said to overlie the supposed structure, whether it was in these leases or not. In respect to that he is asking this witness, "Well, when you related your damage of the Joseph Faria lease in the Geraldine Faria property, weren't you doing that on the basis of the validity of the lease and legal equations?"

Mr. Scampini: I will withdraw the question, your Honor, and save time on something that is rather remote, as far as I can see—without conceding the point, your Honor. If you will just pardon me a minute. I think I am about through. That is all. [682]

(Testimony of John H. Wents, Jr.)

Recross-Examination

By Mr. Bourquin:

Q. Mr. Wents, I understood you in response to Counsel, to say that in coming to your opinion of value in this matter you were not influenced to any extent or in any degree by the fact that the well blew out in November, 1944? A. Yes, sir.

Q. That is your view of it? A. Yes, it is.

Q. You were not influenced?

A. I took it into consideration, but I did not give it any material weight at all.

Q. With information at hand on October 27, 1943, would you have placed the same market value on those properties that you have done here?

A. I would have.

Q. You would have?

A. With the exception that there may have been some change in the worth of the well at that time. I am using cost in this case as the definitive of the value of the well.

Q. That is as I understood you yesterday, that with the information at hand on October 27, 1943, and no more, you would have placed the same value on these properties, with the exception, one, that they might be worth something less because the bottom of the hole was messed up, or, two, that might be balanced off by the fact that there was more hole, good hole, is that correct?

A. That is true.

(Testimony of John H. Wents, Jr.)

Mr. Bourquin: That is all, sir.

Mr. Scampini: That is all. [683]

The Court: Just a moment, Mr. Wents, there is a matter I would like to inquire about. I do not recall in your testimony whether you valued the royalty interest of Maria Faria. One figure you gave us was you valued the royalty interest of Maria Faria in the 208.83 acre tract at \$65,250. I wonder if you could get to that figure that you have there.

The Witness: Yes.

Q. (By the Court): Now, so that the Jury and the Court may understand what you mean by that, you are referring to the interest reserved by the lease to Mary Faria?

A. The one-eighth of the net proceeds from production which was reserved by each of these leases with respect to the valuation of the royalty.

Q. The Cal Bay Corporation took a lease of the property of Maria Faria?

A. That is correct, your Honor.

Q. And they were to get all the oil that came out of the well except one-eighth?

A. They were to get seven-eighths for the operating.

Q. And Maria Faria was to get one-eighth of that oil? A. One-eighth.

Q. And that is referred to as her royalty interest, is that right?

A. That is her royalty in either oil or gas, whichever be produced.

(Testimony of John H. Wents, Jr.)

Q. When you gave your opinion that her one-eighth interest in the oil or gas to be produced had a value of \$65,250, were [684] you there indicating that that was the present value that you attached to her one-eighth interest in the oil or gas?

A. What her royalty interest might be sold for in the open market based upon going prices.

Q. That would be the present value of the future return, would it not?

A. No, it would be the market value rather than the present value, because—

Q. The market value, then, of the future return?

A. Yes.

Q. In other words, one who goes into the market to buy a royalty of a lessor would pay for it something that would be less than the total amount that over the years would be returned?

A. He would expect interest on his money and a profit on his investment.

Q. Exactly, so if, for instance, you were buying an oil royalty of a lessor—I think you said you worked for the Pacific Western Oil Company and Mr. Geddy? A. Yes, I have.

Q. Would you have advised him to have paid presently, that is, at that time, \$62,250 for Maria Faria's one-eighth interest in the oil and gas to be produced from this property?

A. Yes, your Honor, because—

Q. How would you possibly be able to calculate the value of the lessor's oil royalty without having some production basis upon which to make that calculation?

(Testimony of John H. Wents, Jr.)

A. There are hundreds of transactions, your Honor, in oil royalty interests [685] prior to the date when production has been established. In other words, it is a commodity which is bought and sold on the open market.

Q. But how would you figure how much you would pay for a future return of oil when you would not know how much oil was going to be produced from that property or have any basis for calculating it?

A. That is purely a price which has been arrived at by trading in this. The trader in these interests—in other words, we are assuming that the man who buys has a knowledge of what he is buying, and the man who sells has a knowledge of what he is selling, and those people have made these transaction prior to that time. If they fail on one transaction they gain on another. In other words, in an unproven royalty paid is only a fractional part of that which would be paid for a proven royalty.

Q. I understand. What you mean is that one undertakes to pay out money in the open market to buy a lessor's royalty in a property that is yet unproven, that is speculative.

A. It was speculative. In other words, your Honor, the acre per cent may be worth anywhere from a few dollars to \$25 for an unproven royalty, but in a proven royalty it may go up in hundreds of dollars per acre per cent.

Q. Suppose you had an oil royalty of a lessor and you had a production record to show that the

(Testimony of John H. Wents, Jr.)

property produced so much oil; you would then be able to calculate the longevity [686] of the production, wouldn't you?

A. Yes, your Honor.

Q. And if you are able to show that over a period of years the property might produce for the lessor \$100,000 in future returns, what would be the factors that you would take into account in determining that that property might produce \$100,000 for the lessor over a period of years?

A. What were the factors I would take into consideration in arriving at the \$100,000 figure?

Q. Yes.

A. I would take into consideration the past productive history of the wells; I would take into consideration the thickness and the saturation of the sands—in other words, I would arrive at a volumetric figure of the possible production or probable production in barrels. I would then translate that probable production in barrels to dollars.

Q. Would you take into account how much the oil or gas was selling for at the time?

A. That is it. I would translate the barrels of oil or gas into dollars.

Q. At the price that it was then selling for?

A. The present price is the price we use.

Q. Would you make any allowance for changes in prices during the period that the one who bought the royalty would be expecting to get a return for it?

(Testimony of John H. Wents, Jr.)

A. Not so long as the price as of the date of my valuation was not disproportionate, either above or below the mean average price. [687]

Q. Would you take into account factors of uncertainty, such as calamities, catastrophe or damage to the oil field or gas fields of the property were located?

A. In some degree, yes.

Q. And that is known, isn't it, as the discount factor?

A. No, it is not, your Honor.

Q. What is the discount factor?

A. I did not employ my discount factor as a hazard factor. I employed my factor as a money worth factor. Some engineers use a higher discount rate as a compensating factor. I do not believe in that.

Q. I just want to get this clear in my mind, then, the figure that you gave here as to what you would be willing to advise Mr. Geddy, whom I am told is a very experienced oil man, the figure of \$65,250 that you would recommend to Mr. Geddy to pay for Maria Faria's one-eighth royalty interest in these 208.83 acres is not calculated upon any known factors that have to do with production and the like?

A. It is calculated on trading factors in comparable acreage, your Honor. In other words, that is the answer, because we can't use any other method of approach, and there are hundreds of trades. There are large organizations that deal in that.

Q. How would you know how to recommend to

(Testimony of John H. Wents, Jr.)

Mr. Geddy to pay \$65,000 for this one-eighth royalty if he did not know about what he could expect to get out of the production of gas and oil?

A. Your Honor, I am a geologist, too, I [688] could point out to Mr. Geddy the possibility for production on that property, and make comparisons between that property and other properties. I could also point out to Mr. Geddy that the price he would be paying for this royalty on the basis of my calculations would not exceed \$25 per acre per cent, some of it much lower, and I could point out to him that the going price for comparable royalties was higher than that figure.

Q. Then the basis of your estimation or appraisal here in this royalty matter is purely on a speculative basis?

A. That is the basis of the appraisal of lands of this type.

Q. Not, though, where they are proven?

A. Oh, this is not proven, according to my estimation. Proven means that the property is on production. That is my definition of proven.

Q. You might also, might you not, Mr. Wents, have a sand that had been developed to a depth, and by coring, you could determine to a reasonable extent from the porosity of the sand the probable contents, couldn't you?

A. We can't get the porosity of the sand except by comparison, your Honor. We could prognosticate or estimate.

(Testimony of John H. Wents, Jr.)

Q. Perhaps I am getting a little too technical. There are ways, before production actually starts, of determining within reasonable limits from the depths and character of an oil or gas sand actually encountered and drilled through the [689] reasonable probabilities of production from it?

A. Yes, there is.

Q. That is not the case here, of course?

A. Yes, it was the case here. The reasonable possibilities for production were known, in my estimation.

Q. The well had not been drilled to a point where you were able to say that the well had penetrated seventy, eighty, ninety, one hundred or one hundred and twenty-five feet of designated sand?

A. In my opinion your Honor——

Q. But the well had not been drilled to that point?

A. Your Honor, may I explain something in that connection?

Q. Just answer my question first.

A. The well had not been drilled to that point at that time. However, your Honor, the well had been drilled to a depth to give us the marker points whereby the geologists could estimate the depth at which things could be encountered with a very fine degree of error.

Q. It is on that speculative basis that you have stated that you based your valuation of this oil royalty? A. Yes, it is, your Honor.

The Court: I am sorry to have taken up so much

(Testimony of John H. Wents, Jr.)

of the time of Counsel in this matter, but I wanted to find out the basis upon which—a matter that was not touched by Counsel—the royalty was calculated by the witness. We will take the morning recess at this time, ladies and gentlemen. Please bear in mind the admonition of the Court. [690]

(Recess.)

Mr. Scampini: I have one more witness, Mr. Bradford.

WILLIAM G. BRADFORD

recalled for Defendants; previously sworn.

The Clerk: You have already been sworn, Mr. Bradford. Will you state your name for the record? A. William G. Bradford.

Direct Examination

By Mr. Scampini:

Q. I believe you already testified, of course, Mr. Bradford, when I asked you concerning your activities in the oil business. I will now ask you what experience or what activities have you engaged in in connection with the purchase and sale of oil leases and gas leases, and royalty interests owned by lessors in oil leases or gas leases?

A. Well, I started doing that work about 1933 or '34; somewhere along about 1933, the latter part of 1933, I believe, and I have stayed in that line more or less steadily up to about a year ago. Of

(Testimony of William G. Bradford.)

course, I still do a little on the phone at home. In the last year I haven't done much.

Q. For what companies have you purchased or sold oil leases or gas leases during these years?

A. Well, I have a memorandum here. Well, I did work for the Sunset Oil Company, Barnsdall Oil Company, Bankline Oil Company, Signal Oil Company, Master Petroleum, the Hawaiian Exploration Company, J. E. O'Donnell, Century Oil Company, Republic Petroleum, Mohawk Oil Company, Southern California Petroleum, E. A. Bender [691] oil operator, S. W. Brooks Company.

Q. When you say you have done work for them, what do you mean?

A. I purchased leases for those people.

Q. In what territory?

A. Well, practically all over the State of California, here, wherever there has been what we would call a likely place, or a hot spot, as we know it.

Q. Any place outside of California?

A. Yes, I have leased lands in New Mexico.

Q. Have you bought and sold oil leases or gas leases or royalty interests for your own account?

A. I have.

Q. How many transactions of that character can you state, approximately, you have engaged in?

A. Well, I don't know just how many deals I have been in on my own.

Q. Give us an idea.

A. I would say 20 or 30, probably.

Q. What fields?

(Testimony of William G. Bradford.)

A. Well, in fields, what we call the Los Angeles Basin and San Joaquin Valley.

Q. How many acres of land would you say were involved in oil leases or gas leases you have handled in the last ten years for the account of oil operators or oil companies?

A. Well, including oil operators and oil companies and myself that I have done, I would say close to 200,000 acres of land.

Q. In approximately what districts?

A. Well, the majority of that big acreage has been up in the San Joaquin Valley, Kern County, Tulare County, Fresno County, Madera County.

Q. Are you familiar with the market for oil and gas leases, [692] or royalty interests.

A. I think I am familiar with it.

Q. Can you state whether or not there is an established market for the trading or purchasing and sale of oil and gas leases, or royalty interests?

A. Yes, there is a market at all times for each of these——

Q. There is always a buyer and always a seller at the right price for oil and gas leases or royalty interests?

A. That is right.

Q. Does that rule apply in cases of leases or royalty interests on land which have not yet actually been proven as well as on lands which are in production? A. Yes.

Q. Have you dealt in any such transactions, yourself?

(Testimony of William G. Bradford.)

A. I have. I dealt in what was known as a rank wildcat where there is no well drilling, from just what might be rumors, where somebody was in there leasing or blocking up for a wildcat.

Q. When you visited the property of Cal Bay Corporation in December, 1944, did you make an investigation of the acreage owned by Cal Bay Corporation under lease?

A. I looked the property over. I did.

Q. Did you determine the acreage of land held by Cal Bay Corporation under lease?

A. I believe I have it here, if I can refer to a note on the amount of acreage.

Q. It is right here on the map. Did you determine at that time, did you make inquiry——

A. Yes, I looked the acreage all over that they had. [693]

Q. Did you look at the location of the various leases? A. I did.

Q. Did you determine the terms and conditions of the leases?

A. I did; I looked the leases over.

Q. What purpose did you have in mind when you made those investigations?

A. Well, I was going to buy some acreage up there for myself and for Mr. Bender; he is the man who sent me there; he said, "I have information that I got that there will be a hot spot going on up there, you go and get some acreage for me."

Q. You also testified you actually worked on the well? A. I did.

(Testimony of William G. Bradford.)

Q. Based upon your knowledge in buying and selling for your account and the accounts of other concerns oil and gas leases and royalty interests, and based upon your own personal investigation of the properties in question, and the other results obtained in the course of drilling the Faria well, are you in a position to state whether or not you arrived at an opinion as to the fair market value of the leasehold estate of Cal-Bay Corporation and Joseph Faria, Jr., and the royalty interests of Mary Faria, Edward Faria, and Mae E. Roche at or about July 24, 1944? A. I have.

Q. Now, taking up the 208.83 acres of land leased by Cal-Bay Corporation from Mary Faria and taken by the Government pursuant to this complaint, which is Parcel 59 in the complaint, [694] have you formed any opinion as to the fair market value of the leasehold estate of Cal-Bay Corporation on those 208 acres, more or less, as of January 15, 1944? A. Yes.

Q. What is your opinion?

A. Well, I figured on the 208 acres there and the well at a fair value on the thing, I figured the whole at \$208,000 for the 208 acres, that is \$1000 an acre, for the reason the well is connected with it and I know what they had there, I seen, myself, and that is the reason I based the price on that. I allowed for the well \$150,000.

Q. (By Mr. Seampini): Counsel has just brought to my attention that I used the date of Jan-

(Testimony of William G. Bradford.)

uary 15, 1944. I meant January 15, 1945. Is that the date to which you are now giving your value?

A. Yes, that is the date I made up the value when I was up there.

Q. What was the total value that you placed on the entire leasehold estate of Cal-Bay Corporation on the 208 acres?

A. Well, including the well, acreage and all, I placed a value of \$358,000.

Q. With respect to the leasehold estate of Cal-Bay Corporation in the 5 acres leased by it from Edward Faria, Parcel 58, have you any opinion as to the fair market value of that leasehold on January 15, 1945?

A. I have.

Q. What is that opinion?

A. I would say \$5000.

Q. With respect to the 4.96 acres, just under 5 acres, leased by Cal-Bay Corporation from Mae E. Dutra Roche, being Parcel 57, taken by the Government, have you any opinion as to what the [695] fair market value of that leasehold was as of July 24, 1944?

A. I give it the same value as I did the other five acres. I call it a five-acre piece. It lacked a little bit of being five acres.

Q. What is that value?

A. \$5000.

Q. With respect to the leases retained by Joseph Faria and in respect to the 63.91 acres of land retained by Joseph Faria from the Mary Faria lease, and taken by the Government as part of Parcel 59, being the portion that I am now indicating with

(Testimony of William G. Bradford.)

my pencil, marked in yellow, have you any opinion as to the fair market value of the leasehold estate of Joseph Faria in those 63.91 acres as of January 15, 1945? A. I have.

Q. What is your opinion?

A. I call it 64 acres; I valued that at \$51,200.

Q. How much per acre is that?

A. \$800 per acre.

Q. With respect to the royalty interest of Marie Faria, you know what that royalty was under the lease? A. I do. It was one-eighth.

Q. With respect to that one-eighth royalty interest of Marie Faria in the 208.83 acres of land taken by the Government from Cal-Bay Corporation, being portion of Parcel 59, have you any opinion as to the fair market value of that royalty interest as of January 15, 1945? A. I have.

Q. What is that opinion?

A. Well, I valued that 208 acres, \$200 an acre, \$41,600. [696]

Q. When you say you valued those 208 acres—

A. That is the royalty, the 12½ per cent, all the woman would ever get out of it if it was put on production.

Q. With respect to the royalty interest of Edward Faria which was likewise one-eighth in the 5 acres of land owned by him and leased by him to Cal-Bay Corporation, Parcel 58, have you any opinion as to the fair market value of that royalty interest as of January 15, 1945? A. I have.

Q. What is your opinion?

A. Well, I give it \$200 an acre, \$1000.

(Testimony of William G. Bradford.)

Q. I take it you mean you value the royalty interest at \$1000? A. Yes.

Q. With respect to the royalty interest of Mae E. Roche in the parcel of land owned by her which is just under 5 acres, and constituting Parcel 57 taken by the Government, and which royalty interest is likewise one-eighth, have you formed any opinion as to the fair market value of that royalty interest on July 24, 1944?

A. Yes, I give her the same thing as I did the other one. I call the two five acres apiece.

Q. What is the value of that royalty interest?

A. \$1000.

Q. Have you formed any opinion, Mr. Bradford, as to whether or not there was any substantial change in the market value of any of the leaseholds in respect to what you have testified, or any of the royalties between July 24, 1944, and January 15, 1945?

A. I don't understand that question. [697]

The Court: Read the question, Mr. Reporter.

(Question read.)

A. Well, if I understand your question right, after the well has been abandoned, taken out of there——

Q. (By Mr. Scampini): That would be after January 15th. I am referring you to the interval of time between July 24, 1943, and, let us say, December 15, 1944.

A. No. I would say the price was all right.

Q. Was that substantially the same?

A. Yes.

(Testimony of William G. Bradford.)

Q. Upon what information available to you or possessed by you have you formed your opinion as to the value of the leasehold estate of Cal-Bay Corporation in the 208.83 acres of land?

A. Well, I reached a value there. I am not an engineer, but I talked to a lot of them, and I get to see a lot of them. I try to keep in touch with the market and know what the market will pay, and on my past experience in drilling and producing oil wells and the acreage I have handled, and the structures I have followed up to try to keep up with them, I know just about what people will pay for it, and what I think it should bring, and what I think is a fair price for them.

Q. Would that reasoning apply in respect to the other values fixed by you as to the remaining parcels?

A. Absolutely.

Mr. Scampini: I am not going to go into any question of severance damage from this witness, so you can take the witness, Mr. Bourquin. [698]

Pardon me, Mr. Bourquin; I overlooked one royalty interest, there are so many complications here.

Q. Have you formed any opinion, Mr. Bradford, as to the fair value of the royalty interest of Mary Faria in the 63 acres of land taken by the Government from the lease of Joseph Faria, being portion of Parcel 59?

A. I have.

Q. What is that value?

A. I call it 64 acres. I give it \$150 an acre, \$9600.

(Testimony of William G. Bradford.)

Q. What is the total value of the royalty interest of Mary Faria in the 208 acres taken from Cal-Bay and the 63 acres taken from Joseph Faria?

A. \$51,200.

Q. Is the total? A. Yes.

Q. Would that value be true, approximately correct, at any time between the period of July 24, 1944, and December 15, 1944?

A. I will say the royalty would be about the same, from the information I have on it later.

Mr. Scampini: That is all. You may take the witness.

Cross-Examination

By Mr. Bourquin:

Q. Mr. Bradford, counsel must have overlooked this. Did you estimate a value for the portion taken from the Geraldine Faria piece, the half-acre, .65 of an acre?

A. I wouldn't give you a dime for it.

Q. You wouldn't give a dime for it?

A. It is too little to operate on. You couldn't drill a well on it. You would only get yourself in a lawsuit if you tried to whipstock, and the operators all know that. That little half acre there [699] isn't being covered. I don't want it.

Q. Did you conclude that any damage had been suffered to Joe Faria's holdings in the Geraldine Faria piece by reason of the Government taking the property?

A. Let's see which piece you are referring to.

Q. Joe Faria is the yellow line of the Geraldine Faria property.

(Testimony of William G. Bradford.)

A. Do you want me to say if Mr. Faria suffered any damage by the taking of that little half acre? No.

Q. Did you conclude his leasehold interest in the Geraldine Faria piece had suffered any damage by reason of the Government taking what they did of the Cal-Bay Corporation lease?

The Court: The attorney did not examine him as to that.

Mr. Bourquin: All right. I will leave it out then.

Q. Mr. Bradford, did you buy for yourself or anyone else any of the surrounding acreage not included in Cal-Bay lease and the Joseph Faria lease when you came up there?

A. I didn't buy a dime's worth of any property up there.

Q. Did you sell any? A. No, I didn't.

Q. I understood you to say that your opinion of value of the properties that you have voiced opinion upon here this morning suffered no change between July, 1944, and January 15, 1945.

A. Well, they suffered a change in this way, that you take the well out of there, which I thought to be a gas well, and still think so, naturally if you take that all away from there people are going to think twice, and it will give the property [700] a black eye, it would be hard for me to get an operator to go up there to drill a well without he knew what I know. Naturally, he won't pay the money for it. [700-a]

(Testimony of William G. Bradford.)

Q. Was your opinion of the value of the Cal-Bay lease in the Mary Faria property as of July, 1944, any different than your opinion of its value as of January 15, 1945?

A. No, I would say that is the same as long as we know what we have got there.

Q. Was your opinion of the value of the Cal-Bay lease in the Mary Faria property as of October 28, 1943, any different than your opinion of the value on January 15, 1945?

A. Well, it is different in this way: I was not there and seen those tests, but from the information that I have, there is where my values would start.

Q. Would you value the Cal-Bay lease in the Mary Faria property at the same figure, namely, \$208,000, that you valued it as of October 28, 1943?

A. Yes, I believe I would have to now.

Q. In your estimate of the value of that property you made an allowance for the well, is that correct?

A. I did, of the properties there that the well was on, yes.

Q. On what basis did you do that?

A. Well, from the information that I have there they spent nearly \$300,000 on that well—\$270,000 or \$280,000—and you had to spend that in order to show whether you had an oil or gas field or not; otherwise you would never know. So it naturally had a value.

Q. What did you base it on? What you thought would be the reasonable cost of drilling the well?

A. Well, in this [701] way——

(Testimony of William G. Bradford.)

Q. Wait a minute. Can't you answer that yes or no, and then explain?

A. Will you repeat the question?

(Question read.)

A. Well, I won't call that reasonable, that \$280,000, or exactly reasonable.

Q. Can you answer whether you base it on what you hold to be the reasonable cost of drilling the well?

A. I will answer and then explain, if I have a chance. The reason for that—I might go further. I believe now, with the knowledge I have of that formation, I believe I can go in there and drill a hole for \$100,000 to \$150,000 and complete it. But not knowing what I know, at the time they went in there they didn't know what those shale beds were and the trouble they had to go through them.

Q. So your process in arriving at a value of \$350,000 for the Cal-Bay lease on the Mary Faria property was a process of adding to the value of the lease the reasonable cost of drilling the well, is that correct?

A. Well, somebody has paid for it.

Q. Will you answer that yes or no?

A. All right, I will answer that yes.

Q. In arriving, for example, at your royalty estimates, what did you estimate the production would be?

A. On that well, had it been properly finished, with the showings I [702] seen there, I believe the well would have three to four million cubic feet if it had been properly brought in from the showings I had seen.

(Testimony of William G. Bradford.)

Q. On what do you base the belief that that well would have brought in three to four million cubic feet of gas?

A. The amount of weight of mud put in that well, and the way the well pushed out, and as quick as it did, from the past experience I have had, about thirty-three years of drilling them.

Q. In other words, sir, would you estimate from the weight of the mud there to hold the pressure you estimated a figure of the volume of the well, is that correct?

A. Well, I have had quite a bit of experience——

Q. Please answer, and then you can explain.

A. I will say yes, and then explain. From the information and the time that I have worked around wells, and I have brought in some pretty good-sized ones, gas wells and oil wells, I have pumped a lot of mud in, mixed a lot, and I think I know when mud is in good shape, whether it is capable of sealing off gas or whether it is gas cut or not, and the type of mud I have seen mixed and put in that well, good clean mud, 115 or 116 pounds weight, that it would have taken that to kill it, I would say it takes a lot of gas to do that, three or four million, maybe five million cubic feet of gas to have that much punch to it and keep coming. [703]

Q. Do you conclude volume of production from pressure alone? A. Well, it takes——

Q. Please answer that and then you may explain.

(Testimony of William G. Bradford.)

A. I would say no, but as long as I stayed there and watched that well, and the past history that I had on it, from men I believed to be reliable that know the oil and gas business from an engineering standpoint, and the drillers on the well and what had taken place before and what had taken place after I got there, that is how I base it that the well would have made a lot of gas had it been properly brought in. But by running a tester, and by referring to a Johnson test will not give you the actual production the well is capable of making as quick as if you perforated your pipe and did the right job to bring it in proper.

Q. You mean, you base your conclusion on the fact that perhaps those Johnston tests in October, 1943, did not give the real showing of the gas present, is that your view?

A. Neighbor, there never has been a Johnston tester or any other tester manufactured—

Q. I will ask you again: Do you base your opinion upon the fact that the Johnston test made in October, 1943, did not give a true picture of the gas in that well? A. That is right.

Q. That is what you based it on?

A. Yes, for this reason: you cannot get what a well will produce by just running a [704] tester. You run that to see if you have got something worth while.

Q. You were never at the well before December 10, 1944, were you?

A. I believe that is about the day I got there.

(Testimony of William G. Bradford.)

Q. You, however, I assume, reviewed the log on the well as we have reviewed it here, did you?

A. Well, I didn't review the log so much as I got it personally. I talked to drillers who had been on the property. I talked to Mr. Mayes.

The Court: Yes, but he just wants to know if you reviewed the log.

The Witness: I looked through the log, yes. I did not make a study of it.

Q. (By Mr. Bourquin): Did you pay more attention to what the drillers told you that were on the ground?

A. Yes, I did.

Q. Do you base your opinion of value here upon what drillers told you of their experiences in drilling that well?

Q. What the drillers have told me and what their engineers have told me—that is what I base it on.

Q. Your opinion of value is based not so much upon the log showing, but upon what the drillers and engineers told you had transpired in the exploration, is that true?

A. And the Johnston test——

Q. Please answer the question?

A. Yes, sir, it is.

Q. And when I say your opinion of value, I mean your opinion [705] of volume, which you would translate your opinion of value, is that true?

A. Well, the amount of gas that I think the well would make, yes.

Q. And what you think from what they told

(Testimony of William G. Bradford.)

you the well would make is the basis upon which you estimate the value of the royalties, is that correct? A. Well——

Q. Please answer that yes or no.

A. I will say no, that is not correct exactly for this reason: because there is the time in every oil well in the world that is being drilled, a wildecat well, in the oil man's language, when the boys that are hungry for oil and gas leases will go in and pay more money at that particular minute than they will at any other time.

The Court: Because they feel it would be a good speculation?

The Witness: It is a good shot, your Honor, that is it. They say, "I believe you have something." Then maybe next week they wouldn't give you a dime for it.

Q. (By Mr. Bourquin): Let us clear this up. You said, One, you did not accept the Johnston test as conclusive.

A. That is right.

Q. You said, Two, that you did not pay so much attention to the log because you were more interested in what the drillers told you, is that true?

A. That is right. I would rather have a man tell me a thing than to see it in figures, [706] because then I will know. He might put down the wrong figures.

Q. In estimating what you said here to be the volume of gas in that well, do you base it upon what the drillers and the engineers told you when you visited the well?

(Testimony of William G. Bradford.)

A. And what I seen myself.

Q. Please answer that. A. Yes.

Q. Yes.

A. And with what I seen myself.

Q. And what you saw yourself commencing with December 1, 1944? A. That is right.

Q. Are you a geologist?

A. No sirree.

Q. Did you attempt to survey or investigate the geology?

A. Yes, I talked to, I would say, a half dozen geologists in the State of California regarding this area, and even the property the well was drilled on.

Q. So again, for support that you gave your conclusion, you based it on what geologists you had talked to had told you, is that true?

A. Yes, and what I think I know myself.

Q. For a moment on this test business, what is a production test?

A. A production test? Well, we go in to make a production test. Maybe we will make it by pumping a well or maybe we will make it by running a Johnston experimental test, or maybe we will set a packer and see if it will blow. There are a half dozen ways of making a production test.

The Court: What he means is a method of determining how much a well will produce. [707]

The Witness: When you come to an actual production test, your Honor, that means how much can I get out of this property.

(Testimony of William G. Bradford.)

The Court: That is what I said: It means how much a well will produce in quantity, doesn't it?

The Witness: Yes, either gas or oil, your Honor.

Q. (By Mr. Bourquin): When you swab a well in a production test that does not give you a good test, does it?

A. Well, not always, because there can be enough mud and mud materials in this plaster that we use, and which we have to use to hold back gas, and there are times when you can swab four or five times and have nothing, and then maybe she will break loose and come in after you lower your column of fluid—that is a test that they all go through—but I wouldn't call it a fair test.

Q. Would you accept a production test, a swabbed hole production test as a fair test of the volume of gas in a well?

A. No, I would not accept that as absolutely all the well would make, no, sir.

Q. What tests do you apply when you test a well for its productive capacity?

A. Well, we set a string of pipe, cement it off, get an okeh from the Division of Oil and Gas that we have no water transfers, that is, all our water has been shut off above the zone we are going to test, and we go in to gun-perforate that, or else we drill it out.

The Court: To make a long story short, what you do is you run the well and measure how much comes out of it, don't you?

A. We can say that, Judge.

(Testimony of William G. Bradford.)

Q. (By Mr. Bourquin): On that score, did you know or ascertain from your investigation that when Cal Bay went back to resume drilling in July, 1944, that before it did any drilling at all it spent the time until January 25th swabbing the well and making production tests; did you ascertain that?

A. Well, I taken all that into consideration, yes.

Q. Did you ascertain that?

A. I don't know what you mean by "ascertain."

Q. Did you know that?

A. I knew that they did those things.

Q. You knew that they did that?

A. Yes, I was told that.

Q. Did you examine the log?

A. I was told it by Mr. May, by Mr. Byron Norris, that they had made those tests, and the Johnston test man.

Mr. Scampini: Haven't you the date wrong, Counsel?

Mr. Bourquin: I want to know what this witness knows. I am not so much interested in straightening out the facts of this case as to just what he knows.

Q. Did you know from the time they went back to the property in July, on July 25th, they spent all of their time in swabbing the well and making production tests?

A. Well, I only know what I was told.

Q. Did you know that? Were you told that?

A. In July of what year?

Q. 1944.

(Testimony of William G. Bradford.)

A. They did not spend all their time, no. I was told that they went in to make tests.

Q. Did you know how much time they spent in making the production tests in 1944?

A. I do not know of any production tests that were made in 1944.

Q. You do not know of any?

A. All the tests I know that was made at any time was maybe one or two occasions with the [709] testor, and the exact dates I don't know. I didn't check into the log.

Q. What tests do you mean?

A. The Johnston.

Q. That is the only test you knew to be made of the well?

A. You mean they had perforated the well and had swabbed the well?

Q. You knew they had perforated the well and had swabbed it?

A. I had been told that, yes. I wasn't there.

Q. Did you know that they had set a packer at 4140 feet in July, 1944, and the packer would seal off what was below, wouldn't it?

A. That is right, if it was set.

Q. They had swabbed out the hole below the packer; did you know that?

A. I didn't know that they had set the packer. I wasn't told exactly, as I remember it, that they had set a packer, no, but that is a method.

Q. You did not know that they had set a packer and swabbed out the hole below 4140 feet in July, 1944?

(Testimony of William G. Bradford.)

A. I was told that they had swabbed the well.

Q. Did you know that, please, that they had set a packer and swabbed the hole out below 4140 feet?

A. I wouldn't say I knew for sure whether they said they set a packer, or not. I know they told me they had made those tests, and that is one way of making a test.

Q. Pretty good way?

A. It is a fair way. I like that way equally with the Johnston test, I will put it. [710]

Q. That is an exact test, isn't it?

A. No, not an exact test.

Q. Not an exact test, when they set the *backer*, swab out the hole below, and take a test of exactly what gas they can get in a hole empty of mud?

A. It serves the same purpose that it did with two different instruments entirely.

Q. They were really then testing the merits of their 1943 Johnston test, weren't they?

A. Yes, I would give a test.

Q. Weren't they? Weren't they then testing the merits of their 1943 Johnston test?

A. I guess that is right.

Q. Did you know that at that time they shot new perforations in the casing at 4270 to 4280? Did you know that?

A. I was told that they did gun perforating, yes, sir.

Q. In other words, that they had holes there from 1943 that had never been sealed. They shot new holes at 4270 to 4280; they set the packer; they

(Testimony of William G. Bradford.)

swabbed the hole. In other words, they did bring up by their tubing what gas was there. Did you know that they did that?

A. Yes, sir, I was told that they swabbed for production.

Q. Did you know at that time they could not get enough gas to make it commercial? Did you know that? A. No, I didn't know that.

Q. They did not tell you that?

A. No, they didn't tell me they didn't get enough to make it commercial.

Mr. Bourquin: That is all. [711]

Redirect Examination

By Mr. Scampini:

Q. Did you know of your own personal knowledge that as a result of swabbing the well in July, 1944, gas in commercial quantities was not discovered or obtained?

A. Mr. Scampini, I did not get that question exactly.

Q. Perhaps I did not make myself clear. I was rather confused, myself, in what counsel was driving at. You did know swabbing had been done on the well in July, 1944, didn't you?

A. I was told that, yes.

Q. Were you told by anyone or did you know of your own knowledge that not sufficient gas in commercial paying quantities was obtained as a result of that swabbing operation?

(Testimony of William G. Bradford.)

A. I was told that they had swabbed the hole and made a test by perforating and got one hundred or one hundred twenty five thousand cubic feet of gas.

Q. Did you give that factor any consideration or weight in arriving at the figures of value you testified to? A. I certainly did.

Mr. Scampini: No further questions.

The Court: Is this the last witness?

Mr. Scampini: It is my last witness, except I desire at this time to move the court for an order——

The Court: Are you through with this witness?

Mr. Bourquin: I want to ask him one question.

Q. Were you told what showing they got in the Johnston test made [712] in October, 1943?

A. I did not get exactly what you said there.

Q. Were you told what showing of gas they get on the Johnston test made in October, 1943?

A. I believe I was told of every showing they had there.

The Court: He wants to know if you were told of that one. A. I would say yes.

Q. (By Mr. Bourquin): What did they tell you about the showing on that test?

A. I don't remember exactly what they did tell me.

Q. What information did you have as to what the Johnston test disclosed in 1943?

A. Well, that the hole had showed one hundred to one hundred twenty-five thousand cubic feet of gas.

(Testimony of William G. Bradford.)

Q. You answered Mr. Scampini that somebody told you what the well showed on this production test made in July, 1944, did you?

A. Well, I probably did answer him, yes.

Q. Who told you that?

A. I got my information on the test from Mr. Norris and Mr. May and the other men on the well.

Q. Mr. Faria?

A. Yes, I guess Mr. Faria may have told me that very thing, too.

Q. What did Mr. Faria tell you he got on the production tests that they made in the days during July, 1944?

A. That I don't recall.

Q. In other words, when you are talking about one hundred to one hundred twenty-five thousand cubic feet, you are talking about the showings on the Johnston test in 1943, aren't you? [713]

A. Well—

Q. Please answer my question.

A. Yes, sir, if that is the date they made it, that is what I am talking about.

Mr. Bourquin: That is all.

Mr. Scampini: No further questions. I am through with my case, may it please the court, except I desire to move the court for an order directing the plaintiff in this case to exhibit to us for inspection a certain daily record made by one of the inspectors, placed by the Navy on the Cal Bay property, to observe and report concerning the drilling progress of the Faria well. I have asked for permission to look at that record. The permis-

sion has not been granted to me, and I believe it bears and has therein evidence of material value in our case.

The Court: You mean that there are matters there—you do not want to contradict your own record?

Mr. Scampini: No, your Honor.

The Court: I do not quite get the materiality of the request.

Mr. Scampini: It confirms some of the testimony which has been brought out during the plaintiff's presentation of the case, your Honor, according to my information. I do not know.

Mr. Bourquin: I think he has a misapprehension about that, your Honor. If your Honor wants to, I would be glad to go into a discussion of that matter, but I do not think this is the place for it. Any information we have we are going to give him in [714] this case.

Mr. Scampini: Very well. That will be sufficient.

The Court: Aside from that matter——

Mr. Scampini: The defendants rest.

Defendants Rest

The Court: Gentlemen, I am going to excuse the jury this afternoon because I feel we should now spend some time in settling the matters of law that arise in connection with motions and other matters. Rather than wait until the entire case is finished and do it in a hurry prior to counsel's argument, I believe we should take those matters up now. So,

if there is no objection by counsel I will excuse the jury until Tuesday morning.

Mr. Scampini: May it please the court, I desire to state that my associate, Mr. Hettman, who has worked up most of the law in this case and would be invaluable in the argument of any question of law, is rather ill today, and confined to his bed, and it would be very inconvenient for such discussion.

The Court: We will see how we will get along. We will have a preliminary discussion about it this afternoon, and if necessary resume it on Monday, but I think it would be better to settle this matter now rather than to wait until Monday. It is not too unpleasant a day, and maybe the jurors can make use of the afternoon in some more pleasurable pursuit.

Ladies and gentlemen, the trial of this case has not yet [715] been concluded. I do not think it will take very much longer. We will take a recess as far as the jury is concerned until next Tuesday morning at ten o'clock. I have another calendar on Monday that will make it impossible to go on with this case on Monday. I will ask you in the interval, in the recess period between now and Tuesday morning at ten o'clock, to remember that it is still your duty not to converse among yourselves concerning this case nor to permit anybody else to talk to you about this case, nor are you to form or express any opinion until the matter is finally submitted to you for decision. The jury will be excused until Tuesday at ten o'clock, and we will recess until two o'clock this afternoon.

(A recess was taken until two o'clock p.m.)

Afternoon Session, January 31, 1947

2:00 o'Clock P.M.

(The jury was not present.)

The Court: Have either counsel any motions or matters that they wish to bring up before we go into the matter of instructions?

Mr. Bourquin: Yes, your Honor, the Government has.

At this time, if the Court please, the Government desires to make a motion to strike the testimony of the witnesses Wents and Bradford in all respects with reference to and inclusive of their opinion evidence of value of the subject property, both the leasehold and royalty values, after the fashion that they have followed in giving their opinions.

In connection with that motion and as a ground thereof, reference is to the fact that both these witnesses have expressly based their opinion of value upon the possibility of an oil or gas deposit which we submit by itself is wholly speculative, conjectural and not a proper basis or sufficient basis to warrant an estimate of finding of market value, but in addition to that and over and above it each of the witnesses has predicated his estimates of the values expressed in his opinion upon a wholly unknown, unascertained and unsupported estimate of the volume of gas or oil which he forecasts the property may contain.

In the case of Mr. Wents, he said that in arriving at [717] his figure, his value, his process was ordi-

narily to gauge that from the record of past production and evaluate selling price. In other words, by equating from there the probable return from the assumed deposit of gas. That by itself would seem to challenge the rule that that is not a proper basis for an estimate of market value, because it is dealing in an unlawful equation of computing of what the land or product thereof would return when in the process of development and sale it was returned.

In that respect we think the vice in that is more to be found in the circulation of the production than it is in his reliance upon what the matter would sell for, because he has avowed that he has considered and made allowance for the various contingencies that have occurred to be encountered in the cost of and production of the possibility which he opines, but fatally that he form his opinion of value is the fact already referred to and which he avows that he has no evidence upon which to estimate the quantity of gas or oil that he may expect would go into this process of computation of the return to be arrived at. So that we think his opinion as far as—well, it meets if it does not surpass any speculative opinion to be found in the books discarded by courts because of the fact it is dealing in unknown factors, in assumptions and speculation and conjecture.

As regards the witness Mr. Bradford, he is only different [718] in his testimony in this respect: he says that he has assumed or estimated a quantity there from the evidence of pressures that were re-

ported to him, but, he says he predicated his estimate of the volume and his estimate then of the value or computation of volume and return upon information received from various individuals not identified further than to say other drillers and engineers and geologists around the well, and he also says that he pays but very little attention to the evidence in the case contained in the log. So we submit to your Honor again that in his case there is no basis in the evidence before the Court and the jury of testing that opinion, and it must be again like Mr. Wents, that he has indulged in assumption and speculation, conjecture, on matters that he confesses he does not know and may not exist in the case.

Secondly, as a part of the motion, or in addition thereto, I desire to make the motion to strike so much of the testimony of each of the witnesses as pertains to and includes the items described by them as cost of the drilling of the well in the case. Each of the witnesses says that he arrived at his estimate of the market value of Parcel 59, that was the leasehold interest of Cal Bay in Parcel 59 on the Mary Faria piece, by a process of first estimating the market value of the mineral rights or oil and gas rights in the property, and then by the process of simple addition of [719] the cost of drilling the well he has arrived at the total value. That challenges the rule that because production costs and so forth are so involved with uncertainties and contingencies and management and what not that they do not furnish any criteria for evaluating the

property, and, moreover, as must appear in this case, the very testimony of the witnesses themselves, to that testimony this motion is addressed, we know that in their view of the matter the evidence was unsupported. Further, it would remain to be seen whether whatever amount was spent in exploration was of any value whatever or not.

Certainly, as part of and in addition to the same motion to strike, we move to strike the testimony of the witness Wents in the respect of his testimony of the severance damage or damage which he voiced the opinion accrued to the land or interest not taken in this proceeding upon the ground that, first, his bases challenge the law in this case as, for an example, the witness testified that his opinion of severance damage accruing to the Geraldine Faria Parcel No. 64 was the damage which he was of the opinion accrued not in any major respect because of the taking of any part of that same lease or interest, but accrued, he said, because of the Government taking of an interest in an entirely unrelated lease or interest, namely, the lease of Cal Bay. So when I say it challenges the law it does not meet, does not approach the [720] requirement and the recognition of the law, because severance damage, according to CCP 1248 where it says the damage may be recovered when the part taken is a part of a larger part. These two parts, these two leases, are separate entities, whereas they once were one belonging to Bud Hildebrand and Joe Faria, and Joe Faria caused a severance long since and long before this taking. So it is rather hard to follow

any theory that would say that the taking of the Cal Bay lease would inflict any damage upon the property subject of the other leases. We might just as well go into separate counties. As far as the law goes, they have a theory that is at variance with the law that neighboring properties are deprived of the merits or advantages of the investigation being carried on by Cal Bay and, therefore, they are damaged. That would be true, your Honor, as the witness himself indicated, in any property that was not even attached. We submit in those three respects the evidence is wholly lacking in that criteria necessary for the support of an opinion of market value.

(The objections were argued by respective counsel.) [721]

The Court: I would feel more inclined to deny the motion to strike all of the testimony, but I think that I shall have to make some comment upon the testimony in the instructions to the jury.

Mr. Scampini: That is entirely proper, your Honor.

The Court: I want counsel to know about that in advance, so that they can take that into consideration. I will deny the motion to strike all of the testimony, the first motion that you made, Mr. Bourquin.

Mr. Bourquin: Yes, your Honor.

The Court: I will deny the second motion, too, with respect to the cost of the well. It might be it might have some bearing on it. I am not pre-

pared to say at this time. You can renew that motion in other forms at the appropriate time, if it becomes necessary.

However, on this question of severance damage I feel that the showing is inadequate, Counsel. If you read the Miller case, it does not seem to me that this is severance damage. What was your theory on that question?

(Further discussion between the Court and counsel on severance damage.)

The Court: I will deny the motion to strike the testimony as to severance damage without prejudice to its renewal at a subsequent stage of the proceeding, if Counsel wants to present it again. [722]

Tuesday, February 4, 1947 10:00 o'Clock A.M.

The Clerk: United States of America vs. Certain Land in Contra Costa County; on trial.

Mr. Scampini: Ready.

Mr. Bourquin: Ready. At this time, if your Honor please, the Government desires to recall Mr. Bradford for another matter on cross-examination. I see he is here.

The Court: Very well.

WILLIAM G. BRADFORD

recalled for further cross-examination; previously sworn.

Mr. Scampini: I assume then, your Honor, the defendants' case has not yet rested, if this is further cross-examination.

Mr. Bourquin: We desire to have further cross-examination.

Mr. Scampini: I assume, then, the defendants' case has not yet rested.

The Court: You would, of course, be entitled to conduct redirect examination of any matter brought out in this examination.

Mr. Scampini: Yes.

Q. (By Mr. Bourquin): Mr. Bradford, in asserting that the property had a market value of \$1 an acre, looking at the Mary Faria piece covered by the Cal Bay lease, are you assuming, [723] for the purpose of making such an estimate, some minimum volume of gas in that property?

A. Well, let me see which piece of property do you have reference to here?

Q. That would be the one that the well is on, I believe, counsel.

Mr. Scampini: That's right.

The Witness: Well, here, I put that value there on that from what I have seen and what I have did, and know about what the well had done before.

Q. (By Mr. Bourquin): In making that assertion are you assuming some minimum volume of gas would exist on that property?

A. Yes. I believe it is absolutely gas land.

(Testimony of William G. Bradford.)

Q. What quantity of gas are you assuming as a basis for such a valuation?

A. I believe from my experience and what I have seen in the oil business for more than thirty years that where a well shows that matter of pressure, that that well shows, and for the amount and type of heavy mud that we used in that well, it is capable of getting a lot of gas.

Q. I will have to repeat the question. What volume of gas are you assuming as a predicate for the assertion of such a market value in that property?

A. Well, I think a well that will——

Q. Please answer. Tell us the volume, minimum volume.

A. I am believing anywhere from two million cubic feet on up.

Q. In other words, in stating that value you are assuming that [724] that well would yield a minimum of two million cubic feet of gas a day; is that correct?

A. Well, that ain't exactly correct, no.

Q. Are you attaching any such valuation to that property on possibilities rather than tests?

A. I will tell you what the——

Q. Please answer that question.

A. Well, yes and no. I will answer you on that basis, because I think that well has a great possibility of being a discovery. I have seen explorations sell up to two or three thousand dollars an acre a half mile away from the well. I sold them for that.

(Testimony of William G. Bradford.)

Q. Is the basis of your valuation that on the possibilities you believe that it would sell for \$2000 or \$3000 or \$1000 an acre?

A. From what I have seen of the well, sell for that, absolutely.

Q. How do you arrive at your figure of \$1000? Why did it have to be that, instead of \$500 or \$100, or \$10? What is your basis?

A. Well, my basis would be this, my experience, and I can go out and find a man, I may sell that man land up to that figure and not have any trouble on account of from what I have seen on the well.

Q. Why don't you say \$10,000 or \$1000?

A. Well, my purpose is putting it at that money it would sell for.

Q. Can you tell us any reason for your assertion of a thousand dollars rather than one hundred dollars, or \$10; that [725] is what I want you to tell me.

A. Well, I can tell you this, that I have seen enough with my own eyes to give an honest to God opinion that was a new discovery and there would be opened up a tract and it is up here where they have demand for that kind of gas, and it will make a commercial field if they are allowed to drill.

Q. You are assuming something——

A. From my personal knowledge I believe that to be a fact. I have got 35 years to back it up.

Q. What was your personal knowledge from which you say it would support that kind of reasoning?

(Testimony of William G. Bradford.)

A. Seeing the well under the conditions that I seen the well, and the information that I had been told by those competent engineers and geologists regarding the structure.

Q. You said your personal knowledge. What did you see, what did you know from which you could reason such a valuation?

A. Well, I seen the well produce gas.

Q. You saw it produce gas? A. Yes.

Q. Just tell us when you saw it produce.

A. I seen the well starting to blow out, when I reduced my mud down from 116 pounds down to 100 pounds, and before it started, immediately to blow out, I put brand new mud in to kill it.

Q. You mean when you reduced your mud, the mud began to surge again and to blow out?

A. When I lightened up the weight of mud they had when I got there with the small circulation I began to reduce the mud, and when I did that the well started immediately to blow out again, on the sides, right across the ditch.

Q. Started to blow out? A. Yes.

Q. That is one thing. Any other on which you reason such a value?

A. It was 110-pound mud, brand new mud, it took to kill that well.

Q. That is the second point, because you had to mix 120-pound—no, 116-pound—116 pounds, and bring the well back to a controlled condition.

A. That's right, that is to keep the well from blowing.

(Testimony of William G. Bradford.)

Q. What other thing did you base the assertion on which you reason such a valuation?

A. Well, that was satisfactory to me.

Q. That was enough for you?

A. Yes. I seen enough right there and of the information I already had on the well.

Q. Have you had any experience or any opportunity to observe the experience of others in gas explorations in Northern California before, Mr. Bradford?

A. Well, I have seen, I guess, two or three different wells come in in Rio vista, over in the Kirby Hills, I seen them, I never drilled one, I never worked on one over here.

Q. How about the well—the first of these you said, you presumed it started a blow-out. Do you know what the experience of the Richfield Oil Company was over in Potrero Hills with respect to their exploration and blow-outs over there?

A. I do not.

Q. You have never looked into that?

A. No.

Q. Don't you know that Richfield, over in the Potrero Hills, the Richfield sank three wells and got blow-outs in two of them, and tremendous pressure, and later abandoned them, and the leases are for sale for a dollar an acre?

A. I seen Shell Oil Company abandon one in a weed patch, called it a dry hole, and it came in, brought in by Danny Hogan; I know that.

Q. You have kept track of the explorations of—

(Testimony of William G. Bradford.)

A. There is no one man can keep track of all of them. I do the best I can.

Q. While we are on the subject of Potrero Hills, where is it? Are you familiar with Potrero Hills over there?

A. There are a lot of Potrero Hills. There is a Potrero Hills down south.

Q. Where Richfield Oil Company explored in Northern California, do you know that?

A. No.

Q. Do you know the location of drilling in Honker Bay that has been so much talked about here?

A. I tried to keep track of them, over in Rio Vista, Bradford Island, in the Honker Bay field; then I see Mr. Faria's well. I closed that up.

Q. Do you know of other explorations by the Ohio Oil Company, in drilling the Willard well that was later abandoned?

A. No, I don't think I do.

Q. You don't know that? A. No. [728]

Q. Do you know where the Ohio Oil Company made its exploration in the three Willard Wells?

A. No, I do not.

Q. Do you know where that is? A. No.

Q. If I told you that that was west of Willows, would that identify it for you?

A. Well, that is a mighty big country up there; you say "west of Willows." I don't know where that well was.

(Testimony of William G. Bradford.)

Q. Do you know their explorations up there, what they were, with respect to blow-outs and pressures? A. No, I don't.

Q. Don't you know one of those wells up there crated up a distance of 200 feet around the well?

A. That can happen.

Q. Don't you know it flowed a rate as high as 20,000,000 cubic feet, and yet that well and the other two have been abandoned and those leases are for sale for a dollar an acre; don't you know that? A. No.

Mr. Scampini: We object to this as purely argumentative and not going to the witness' knowledge.

The Court: No. I think it is proper cross-examination.

Mr. Scampini: Very well.

The Court: It goes to his knowledge. Overruled.

Q. (By Mr. Bourquin): Do you know the experience of the Continental Oil Company at Sites?

A. No.

Q. Do you know where Sites is? A. No.

Q. Do you know anything about the explorations of Continental Oil Company in Northern California. A. No, I haven't followed it up at all.

Q. Do you know anything their Peterson well that they sank at Sites northwest of Willows?

A. No, I don't. I didn't keep up with it.

Q. Do you know that they encountered tremendous pressure and the well blew out, and the well

(Testimony of William G. Bradford.)

was abandoned, and the leases are to be had for a dollar an acre?

A. No. I had seen land all over the State and I could buy land—we will go right back in the same field in a year and it will be worth a thousand dollars an acre.

Q. Have you ever drilled a gas well, yourself?

A. Not a straight gas well I have not, not just straight gas.

Q. Have you ever drilled a well that brought gas in a proven property?

A. Yes.

Q. Where?

A. Huntington Beach, Torrance, Signal Hill, and Santa Fe Springs, Whittier, Montebello.

Q. Tell us what gas wells that you were able to have a hand in so we will know your familiarity on the subject.

A. Well, I had charge of the Gypsy, a number of their wells at Huntington Beach.

Q. Were those oil wells or gas wells?

A. They were oil and gas.

Q. Gas—wait a minute—and oil together?

A. Well, there are times when we bring a well in it will——

The Court (Interrupting): Can't you just answer the question [730] without going off into a long story? Read the question.

(Question read.)

The Witness: They were both.

(Testimony of William G. Bradford.)

Q. (By Mr. Bourquin): Now, do you know what prices leases have bought and sold for in gas explorations in Northern California, in fields of exploration, as distinguished from wells after production has been proven up?

A. Well, they run all different prices.

Q. Tell us some. Remember, let's keep in mind as distinguished, explorations as distinguished from trading in leases after production has been proved up, give us some experiences in Northern California in gas country.

A. This is after the well is in and producing?

Q. Not at all. I want you, if you will, to give us some examples of your knowledge of prices paid in the buying and selling of leases on properties in the process of exploration for gas in Northern California before production is proved.

A. Well, at the most northern California point I know of is in Madera County. That is personal knowledge that I sold any acreage, and that was \$50 an acre.

Q. \$50 an acre. What field?

A. It is not a field yet. It has not been developed yet.

Q. That is in Madera?

A. Madera County.

Q. Madera County. What company?

A. That went to the Republic Petroleum Company. [731]

Q. When was it you say you participated in that \$50-an-acre transaction?

A. That was in 1940.

(Testimony of William G. Bradford.)

Q. Has there been any exploration done there?

A. I believe the Shell Oil Company since that time has drilled a well about a mile from it, or a mile and a half, and drilled on it a dry hole.

Q. Whom did you buy it at \$50 an acre from?

A. I bought the land from Mr. Ward, a rancher. I didn't buy the land, I bought the lease at a dollar an acre.

Q. Who did buy it?

A. I bought it with Jim Conlan.

Q. Jim Conlan and yourself. What did you do with it?

A. Sold it to the Republic Petroleum.

Q. Sold it to the Republic Petroleum?

A. Yes.

Q. How much did you sell it to the Republic Petroleum for? A. \$50 an acre.

Q. When? A. 1940.

Q. What did you pay the rancher for it?

A. We paid him \$1 an acre.

Q. Can you give us any other examples of trading in gas rights in Northern California?

A. No, I don't know; that is the northern-most point.

Q. Do you know what was paid for leases in the Honker Bay field, what they bought and sold for before the field was proved up?

A. No, I don't know. I didn't deal in there.

Q. You don't know? A. No. [732]

Q. You mentioned Kirby Hills awhile ago. Where is Kirby Hills?

(Testimony of William G. Bradford.)

A. That is across the river from here—I guess you would call it across the river. I went over with Mr. Ely Peterson, General Manager of the Shell Company, and went all through there.

Q. Is it near Rio Vista?

A. It is not too far. It is back, to the best of my knowledge, kind of north and west.

Q. Is it on the slough up there?

A. No, it is not right on the slough, I don't believe, from what part we seen. It is back a ways from the water.

Q. Do you know what leases and rights bought and sold for on Kirby Hills before that field was proved up?

A. No, I do not. I didn't do any transactions in there.

Q. Don't you know that Kirby Hills bought and sold for \$10.00 an acre? A. No, sir, I did not.

Q. Didn't you know that Honker Bay bought and sold for \$5.00 an acre?

A. No, sir, I did not.

Q. In estimating the value of a royalty interest in this matter, as you have, you voiced an opinion that the royalty interest on Parcel 59 of the Cal-Bay lease was worth the sum of \$41,600, didn't you?

A. Let me see. Which piece? 49?

Q. 59. I beg your pardon.

The Court: The Maria Faria lease.

The Witness: This piece in her (indicating)?

(Testimony of William G. Bradford.)

Q. (By Mr. Bourquin): Yes.

A. Yes, that was my value on that.

Q. To arrive at that figure you assumed what you believed that well, if continued, would produce in gas, didn't you?

Mr. Scampini: If it please the Court, we object to that because the assumption is not based upon evidence in the record. It is assuming something not in evidence.

Mr. Bourquin: I am asking the witness.

Mr. Scampini: He assumed, your Honor, and then he stated as a fact that which he is supposed to have assumed, and the record does not disclose such facts.

Mr. Bourquin: Shall I rephrase my question, your Honor?

The Court: If you wish.

Q. (By Mr. Bourquin): In estimating that value of the royalty interest in that property, did you assume the amount of gas that property would produce if the exploration was continued?

A. I figured it to be proven property. There would be additional wells drilled on it. That is how I base my value.

Q. In other words, you arrived at your \$41,600 by taking an assumed volume of gas, measuring that against what it would sell for if it was there and brought in, and rating the one-eighth royalty against it, didn't you?

A. I based it on what I personally knew——

(Testimony of William G. Bradford.)

Mr. Bourquin: I will move that that be stricken, if your Honor please, and ask the witness, if he can, to answer the [734] question yes or no.

The Court: Would you like the question read?

The Witness: Yes.

(Question read.)

A. I will answer "Yes" on that, and then explain it this way: the well has shown to me satisfactorily that it was on a structure that they had tapped, a gas structure—at least gas—and if that well would give the evidence that I have seen on it, there would sure be additional wells drilled, and it would absolutely open a gas field of commercial quantities that would pay good money on the figure. It would be easily worth the price I put on the property.

Q. On the question that came up here the other day, Friday, didn't you testify as follows: Page 696, Counsel:

"Q. With respect to that one-eighth royalty interest of Mary Faria in the 208.83 acres of land taken by the Government from Cal-Bay Corporation, being a portion of Parcel 59, have you any opinion as to the fair market value of that royalty interest as of January 15, 1945?

"A. I have.

"Q. What is that opinion?

"A. Well, I valued that 208 acres, \$200 an acre, \$41,600."

(Testimony of William G. Bradford.)

This is Mr. Scampini's question:

“Q. When you say you valued those 208 acres——

“A. That is the royalty, the twelve and a half per cent, [735] all the woman would ever get out of it if it was put on production.”

You so testified, didn't you?

A. I certainly did.

Q. In other words, you have arrived at your figure there on an estimation of so much gas, so much life, and how much in all the lady would get out of it for her one-eighth royalty interest and have given us a figure, haven't you?

A. I meant when the man bought that he would buy whatever was there, whether it would produce a million dollars or whether it would produce a dime. He took the chance when he bought that.

Q. You are basing all these valuations upon an assumption of a volume of gas down there projected on the blowout and the tendency that you observed in this well to resume blowing out that mud, didn't you? A. No, not all of it.

Q. What else?

A. I based it this way, that I could have sold it at that time with the experience I seen and know, that there would have been buyers at that time at that price.

Q. Was there anybody there asking to buy it?

A. No, I didn't try to find anybody to buy it. I didn't have a chance to.

(Testimony of William G. Bradford.)

Q. Did you know anybody there seeking leases from these adjoining land owners on this structure, John Faria and Dutra?

A. I didn't have a chance. I would have bought some of it for Mr. Bender. I will tell you that.

Q. You did not see anybody trading up there looking for leases, did you?

A. I did not, no, sir.

Mr. Bourquin: That is all.

Further Redirect Examination

By Mr. Scampini:

Q. Mr. Bradford, did you observe whether or not all the available or substantially all the available acreage on that structure was then under lease to either Cal-Bay Corporation or Joseph Faria?

Mr. Bourquin: I object to that.

The Witness: Mr. Faria told me he had that structure leased up.

Mr. Bourquin: I object to that and move to strike the answer as hearsay.

Mr. Scampini: If he knows. The question was asked of him, "Did you try to sell any acreage? Did you try to buy acreage? Did you see anyone trying to lease acreage?" If your Honor please, if it is already under lease to the parties defendant in this case, it certainly has a bearing on the reasons why somebody was not present seeking to make new leases or buying them.

The Court: That is, of course, argumentative, Counsel. The witness has testified as to what in

(Testimony of William G. Bradford.)

his opinion the leases would sell for. It would not make any difference who owned them, would it?

Mr. Scampini: That is correct. Nevertheless, it has a [737] bearing on the question of Counsel on cross-examination.

The Court: I will allow the question.

The Witness: Will you read the question for me?

The Court: He wants to know whether you knew all these leases were in the hands of either Cal-Bay or, who else was it?

Mr. Scampini: Joseph Faria.

The Witness: Mr. Faria told me, your Honor, that he had the interest: "I think I got the whole structure leased up."

Mr. Scampini: No further questions.

The Court: I just wanted to ask a question about this royalty.

Q. You valued the 12½ per cent interest of Marie Faria in this lease, you told me the other day, at \$41,600. That is about at the rate of \$3,500 a per cent, isn't it?

The Witness: Your Honor, I figured it at \$200 an acre to buy the entire 12½ per cent, if she was going to sell her entire interest.

The Court: If she had a 12½ per cent interest you were going to buy it for \$41,600, that would be at the rate of about \$3,500 a per cent?

A. That is right.

The Court: Where has anybody in California

(Testimony of William G. Bradford.)

ever paid \$3,500 a per cent for a landlord's interest in a gas lease where the land was not proven?

A. Your Honor, I just sold one—— [738]

The Court: Can you answer that?

A. Yes, I have bought it and sold it for that.

The Court: Where was this?

A. I sold one, a wildcat drilling, sold it to the Seaboard Oil, a matter of record here, in the last three months, \$3,500 for one per cent in three and a half acres.

The Court: Unproven land?

A. It was unproven, your Honor.

The Court: Will you tell me who made that lease, the parties to it, and when it was done?

A. Yes, sir, I will. The Petroleum Corporation and the Producers Oil are owners. They are San Francisco people here.

The Court: Are you telling me that the Seaboard Oil Company pay you \$3,500 a per cent for a lessor's royalty in an unproved piece of land?

A. Your Honor, Mr. Scampini——

The Court: Just answer that question.

A. Yes, sir, they paid more than that.

The Court: The Seaboard Oil Company for a lessor's interest paid \$3,500 a per cent for an unproved piece of land?

A. Yes, sir, they did.

The Court: I just can't believe you are telling the truth on that.

Mr. Scampini: Your Honor, I will cite your Honor to the corporation permit on the subject

(Testimony of William G. Bradford.)

before the Corporation Department. I will give your Honor the number of the [739] transaction.

The Court: I asked a very definite question of the witness and he has answered it. We will leave it go at that.

The Witness: I certainly did.

Mr. Scampini: We offer to prove at this time the records of the transaction and bring the records of the transaction and offer them in evidence. One per cent, if it please the Court, sold for over \$6,400, one per cent in three and a half acres. The nearest well being drilled was a mile and a half away, and it ended up in a dry hole, your Honor, and the *Seaboard* the cash to the Corporation Department in November of last year.

The Court: For a lessor's——

Mr. Scampini: For a lessor's interest of one per cent.

The Court: Well, I do not know what has happened to our Corporation Department in the State of California. That is all I can say.

Mr. Scampini: If it please the Court, the *Seaboard Company*——

The Court: I am sorry to have made this comment. I will tell the Jury to disregard it. It is just a comment of the Court.

Mr. Scampini: I ask now to offer evidence in support of the statement of Mr. Bradford in answer to your Honor's question, and I also protest for the purpose of the record, your [740] Honor's comments in respect to the Corporation Department as being prejudicial to our case before this Jury.

(Testimony of William G. Bradford.)

The Court: I will tell the Jury to disregard the Court's statement. The comment of the Court was on the weight of the evidence and the Jury is not bound by it. The Jury can decide the case if and when it comes time for the Jury to decide the case, according to their own lights and according to the instructions the Court may give them at the time. The Court, of course, has a right to make comments as to the weight of the evidence, but the Jury is not bound by what the Court says in that regard. It may form its own judgment. Does that instruction cover what you have in mind?

Mr. Scampini: Yes, your Honor. Thank you.

No further questions of the witness.

Mr. Bourquin: No further questions.

The Court: That is all.

Mr. Bourquin: We will ask Mr. Wents a question on further cross-examination.

JOHN H. WENTS, JR.

recalled as a witness on behalf of Defendants; and having been previously sworn, testified as follows:

The Clerk: State your name for the record, please.

A. John H. Wents, Jr. [741]

Further Recross-Examination

By Mr. Bourquin:

Q. Mr. Wents, have you ever bought or sold any rights in gas exploration in northern California?

A. No, I have not.

(Testimony of John H. Wents, Jr.)

Q. Are you familiar with the exploration for gas in the various fields by major companies in northern California? A. I believe I am.

Q. When you made the assertion here that the leasehold interest to Cal-Bay in Parcel 59 was worth \$1,000 an acre, what did you predicate that on?

A. I did not use the term \$1,000 an acre that I remember.

Q. How much an acre did you estimate that leasehold was worth?

A. I believe it was in the neighborhood of \$800 or \$850 an acre.

The Court: That is right, \$850 an acre.

The Witness: I believe that is what it was.

Q. (By Mr. Bourquin): What did you predicate that on, Mr. Wents?

A. My knowledge of the trading prices of lands.

Q. How do you fix your figure of \$850 an acre rather than \$85 an acre or \$8.50 an acre? Tell us what is your predicate.

A. Based upon what I think are comparative sales between people who have a knowledge of what they are trading in. I do not mean that such a price perhaps as I have given would be arrived at between the ordinary landowner who is unfamiliar with what he has and the oil company. I am basing it on a [742] deal between people who have a knowledge of what they are trading in, that is, a buyer and a seller both having a knowledge.

(Testimony of John H. Wents, Jr.)

Q. Where in the field of gas exploration in northern California, in the process of exploration, have you a predicate for those figures?

A. I do not know where there is any predication for those figures with respect to gas exploration. However—may I explain—I did not limit the possibilities to gas exclusively.

Q. You mean by that you did not limit the possibilities of this property to gas exclusively?

A. No, I did not.

Q. Do you know what the experience of the Richfield Oil was over at Potrero Hills?

A. I believe I have in my report comments concerning the Richfield's work in Potrero Hills.

Q. Do you know where it is? A. Yes.

Q. Where is it?

A. It shows on the map of California oil fields.

Q. Will you show us that, please? Which do you want to see?

A. The map of California oil fields.

Q. Will you point out to us the Potrero Hills district where Richfield made its explorations?

A. Potrero Hills is north of Suisun Bay.

Q. Are you marking it now or is it marked on your map? A. It is marked on the map.

Q. Which is it?

A. (Indicating): At that position there. [743]

Q. The point that you are indicating here on the map, is that correct?

A. Yes. That would be in Township 4 North and Range 1 West.

(Testimony of John H. Wents, Jr.)

Q. What is this larger block here to represent?
Another field?

A. I think that is the Kirby Hills derrick in there.

Q. Where is this Honker Bay that we talked about?

A. The Honker Bay I believe is this well in here (indicating).

Q. So we can locate Potrero Hills by going back in the sloughs there, back up the sloughs to the point you have indicated on there?

A. It is about five or six miles north.

Q. Do you know what that rights were to be bought and sold for as of the time of this taking, Mr. Wents?

A. No, I do not.

Q. Do you know that they were to be bought for a dollar an acre?

A. From whom and by whom? No, I do not know; but from whom and by whom?

Q. They were to be bought from the landowner, but the "by whom" had not appeared.

A. Well, there is lots of lands offered in that fashion.

Q. Are you familiar with the Ohio Oil Company's exploration up there in those three Willard wells they drilled?

A. I am to a measure, yes.

Q. Does that field show on your map?

A. I believe it does. The location of those wells will show on that map. [744]

Q. Have you marked on it out there?

(Testimony of John H. Wents, Jr.)

A. It would be in 20 North Range, about 1 West, it looks like.

Q. Is it marked in color on your map?

A. The Willows field is there (indicating).

Q. Those are the Willard wells?

A. Correct.

Q. Do you know what the rights in that field were to be bought for as of the time of this taking?

A. Do you mean from the landowner?

Q. Well, who ever owned them?

A. I have no knowledge.

Q. You made this map, did you not, Mr. Wents?

A. No, I did not.

Q. Who made it?

A. That was printed by the Southern California Blueprint Company from the tracing developed by James Bransford. All of the locations, all of the coloring on that map, with the exception of the shading in the vicinity of the ocean in that top righthand corner and the position of the Cal-Bay lands was made from the tracing in which we had no part in the preparation.

Q. Who located these colors on here to show us all these oil and gas fields up and down California?

A. I am sure I do not know who it was. Probably an employee of the Southern California Blueprint Company.

Q. You reviewed this map in your discussion of this question, did you not?

A. Oh, sure. I am very familiar with [745] the map.

52458
No. 11695

Serial, 2459
United States

Circuit Court of Appeals

For the Ninth Circuit.

CAL-BAY CORPORATION, MARIA FARIA,
JOSEPH FARIA, JR., EDWARD FARIA
and MAE E. ROCHE,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee

Transcript of Record

In Three Volumes

VOLUME III

Pages 913 to 1290

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

No. 11695

United States
Circuit Court of Appeals
For the Ninth Circuit.

CAL-BAY CORPORATION, MARIA FARIA,
JOSEPH FARIA, JR., EDWARD FARIA
and MAE E. ROCHE,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee

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Southern Division

(Testimony of John H. Wents, Jr.)

Q. You discussed it with Counsel and the various parties defendant in the preparation of this case, didn't you?

A. I told them I would furnish them a map which would be authentic insofar as the location of the fields was concerned.

Q. Didn't you go into the question at all, when this map came before you, as to what the rights or leases were bought and sold for or were to be bought for in these various fields that are spotted on there?

A. It had no bearing on the subject problem.

Q. You mean to say that what the mineral rights or leases in the fields in northern California as shown on that diagram were bought and sold for has no bearing on the problem before this Court?

A. No, sir, because this date of valuation, or the dates of valuation that we are using are subsequent to the drilling of the Faria well, subsequent to findings in the Faria well. I can't base my opinion except upon comparative values with something which is parallel to that. I can't base any opinion of what a leasehold might pay a landowner for a lease and then turn around and sell it to a major company for. Such a transaction does not even meet the definition of fair market value.

Q. Let me ask you, was the field that was dubbed by the name Nigger Head Dome shown on your map?

A. I don't know whether it is or not. [746]

Q. Do you know where that field is?

A. Nigger Heaven Dome?

(Testimony of John H. Wents, Jr.)

Q. Yes.

A. I do not think I know of it. Was that discovered on or about our valuation date or subsequent to it?

Q. Don't you know, Mr. Wents? Do you know anything about—it has been mentioned here—the explorations of the George F. Geddy Oil Company in northern California? You have been using his name.

A. Counsel, I am employed by J. Paul Geddy, who happens to own the George F. Geddy Corporation, but I am employed by him as an individual, not by the George F. Geddy Corporation. I was employed by the George F. Geddy Corporation on one land or on one operation.

Q. Do you know anything about his exploration for gas and oil in northern California?

A. Yes, J. Paul Geddy.

Q. George F. Geddy Oil Company?

A. Two different things.

Q. You mean you do not know anything about it?

A. I am perhaps familiar with that, because I have a report in my office of the exploration of every individual or company in California covering the last fifteen years. I am furnished as I am here daily, the scout reports on operations which are taking place in the state. I am not familiar with the colloquial term, "Nigger Head" or "Nigger Heaven" Dome, something like that.

Q. Do you know anything about oil explorations that were made [747] by the various oil companies in the vicinity of Woodland?

(Testimony of John H. Wents, Jr.)

A. I believe that I have—yes. I would say I have gone over the records on some of those explorations.

Q. Did you find in that field two explorations had encountered high pressures, high rates of flow of gas showings?

A. I don't remember that.

Q. You do not remember that?

A. Woodland is quite some distance from this property.

Q. It is further than Potrero Hills, isn't it?

A. I believe so.

Q. You do not know what those leases and rights are for sale for up there west of Woodlands, do you?

A. As I say, I would disregard it even if I did know it.

Q. If you found it was a dollar an acre, you would disregard it?

A. It wouldn't make any difference.

Q. Do you know what the lease rights were bought for at Honker Bay in the period of exploration?

A. I heard it in court this morning, I believe, from you.

Q. \$5.00 an acre?

A. That is the first I heard of such a price.

Q. Do you know anything to the contrary about that field in the period of exploration?

A. If I did it would not make any difference in my appraisal.

Q. If you did you would tell us, wouldn't you?

A. I would tell you, and it would not make any difference in my appraisal. [748]

(Testimony of John H. Wents, Jr.)

Q. Do you locate Kirby Hills on your map?

A. Yes, it is the general vicinity there. We pointed it out just a little while ago.

Q. Kirby Hills? I do not think we pointed out Kirby Hills. Mr. Bradford did not know where it was.

A. I said that Kirby Hills lies southeasterly of Potrero Hills.

Q. Southeasterly of Potrero Hills?

A. Yes.

Q. In other words, it is another neighbor of Honker Bay, is it?

A. Five miles away, about.

Q. By the way, while we are on the subject, it is about five miles from Honker Bay to Potrero Hills?

A. I would say it is about six there.

Q. The yellow piece represents the Cal Bay property, doesn't it?

A. Yes, it does.

Q. Do you know what Kirby Hills rights and leases were bought for during the period of the exploration in that field?

A. I heard counsel say something about it this morning.

Q. \$10.00 an acre?

A. Yes.

Q. Do you know anything to the contrary about that during the period of exploration?

A. No, I do not, and it would not make any difference if I did.

Q. From where, then, do you select this figure of \$850, as I have said, in place of \$8.50 or some other figure?

(Testimony of John H. Wents, Jr.)

A. I select that figure from transactions which I believe are comparable—in other words, a transaction between oil [749] companies.

Q. Are you referring to any transaction in gas exploration in northern California?

A. There are no such transactions in northern California, to my knowledge, so I had to go to where I knew there were transactions of that type.

Q. To what field did you go?

A. I went to a wildcat area known as the Bandini area of Los Angeles County.

Q. In Los Angeles County. What is the name of that place? A. Bandini.

Q. Whereabouts is Bandini located in Los Angeles County?

A. About eight miles or ten miles easterly of the City of Los Angeles—that would be the City Hall, roughly. It might be slightly further than that from the City Hall.

Q. Is the place known by any field name, then or now?

A. It was known by the name of Mines Field, from the fact that that is where the old Mines Airport was located.

Q. That is where the old Mines Airport was located?

A. About three miles from the subject property, or the property I was considering, a well has been brought in—I believe a couple of wells have been brought in—and the area is referred to now. I

(Testimony of John H. Wents, Jr.)

think, as the Veil area. However, with respect to the property I considered it was in the Bandini area.

Q. Has that property been explored?

A. That property had been drilled on to a depth of approximately eight thousand feet when this transaction took place. There had been certain [750] showings encountered in the well.

Q. Oil exploration or gas exploration?

A. I do not know how we can differentiate the two, because we have to tell what it is going to be after we turn it into the tanks or the traps.

Q. What were they looking for, do you know?

A. Looking for minerals, I would say, of the hydrocarbon series, whether it was oil or gas.

Q. Were there any other before that, or had there been any other oil or gas provings in Los Angeles County before this transaction you are speaking about?

A. In the immediate vicinity of this area?

Q. In Los Angeles County.

A. Oh, yes, there had been some.

Q. Many?

A. Quite a few.

Q. And you refer us to a transaction that took place in this Bandini property in Los Angeles County for support for the conclusion that you say you came to about this property?

A. That was one of the things that I considered.

Q. Have you any other examples that you would refer us to geographically——

A. Yes.

(Testimony of John H. Wents, Jr.)

Q. —as something from which we can say you resolved your figure of \$850 an acre? A. Yes.

Q. Where is another?

A. In the vicinity of the townsite of Edison. That would be on the Tehachapi Road, about ten or [751] twelve miles easterly of Bakersfield.

Q. In the Bakersfield area. Have you any other that you would refer us to from which you have resolved your figure? A. Yes.

Q. Where is another location?

A. In the so-called Alhambra Park area, Los Angeles County.

Q. In Los Angeles County again. Have you any other?

A. I believe that is sufficient. To my knowledge, there are others, but I did not even bother to look up the data on them.

Q. Is it fair to say that in order to support or resolve the figure you have stated or asserted to be the market value of this property that you have obtained from any figures of explorations in northern California? Is that fair to say?

A. No, it is not.

Q. Have you used the figures for which rights or leases are bought and sold for in northern California during the period of exploration to support this figure? A. No, I have not.

Q. You have not?

A. For the reason that the transactions I am familiar with in northern California are the transactions between a lease broker or a land develop-

(Testimony of John H. Wents, Jr.)

ment man of a major oil company dealing with a landowner direct, and I do not believe that that meets with the definition of a fair trade.

Q. What do you mean? You say the transactions you know of in northern California are lease transactions dealing with [752] whom?

A. With landowners.

Q. With landowners?

A. Landowners who have not been advised of what they might be possesd.

Q. Oh, I gather. In other words, you mean all the transactions in nothern California smack of overreaching on the part of the lease brokers, is that it?

A. Those that I am familiar with smack very much of that way.

Q. That is, let us say, the predicate or the basis for your refusal to take into account the prices for which rights and leases are bought and sold for in northern California in exploration?

A. They are, definitely.

Q. (By the Court): I suppose that never happens in southern California?

A. It does, your Honor, but it does not fit the definition of what I used to predicate my values upon in my estimation. It takes place everywhere.

Q. (By Mr. Bourquin): What basis did you employ to compute or arrive at your figure that you gave us representing the value of the royalty interest, let us say, of Mary Faria in parcel 59?

A. Comparative sales.

(Testimony of John H. Wents, Jr.)

Q. Without taking the time, are you referring now to these sales that you have told us about from Los Angeles County and the Bakersfield area?

A. Not those in particular. Others.

Q. Did you employ any sales or sales data with respect to sales made in northern California?

A. I am not familiar [753] with any sales of royalty interests in northern California of the type which we are dealing with.

Q. What was the valuation figure that you expressed as the worth of the royalty interest of Mary Faria in Parcel 59 covered by the Cal Bay lease?

A. I believe my figure was based upon \$25 per acre per cent as the highest value employed, and from there on I dropped down to maybe \$1.00 per acre per cent.

Q. What did it come to?

Q. (By Mr. Scampini): Are you referring to the royalty interest in the Cal Bay lease, Counsel, the Joseph Faria lease, or both leases?

Mr. Bourquin: Just Parcel 59, the Cal Bay lease.

Mr. Scampini: Parcel 59 is split into two parts: one is owned by Joseph Faria and the other by Cal Bay.

Mr. Bourquin: In the question I said Cal Bay.

The witness: \$85,000, roughly, is the value I testified to.

Q. (By Mr. Bourquin): \$85,000 is the value of the interest reserved by the lessor in that parcel of property covered by the Cal Bay lease, is that correct?

A. Yes.

(Testimony of John H. Wents, Jr.)

Q. What did you assume would be the production of this well if the possibility that you started proved up?

A. I did not assume any production figure. I assumed what their comparable acreage was trading for in the open market. [754]

Q. Do you know of any such trading in northern California in oil or gas exploration?

A. Yes, I do.

A. In exploration? A. Yes, I do.

Q. Where?

A. In the vicinity of the town of Shafter.

Q. Where is that, Mr. Wents?

A. Oh, it might be in Kern County—

The Court: He is asking about northern California.

Mr. Bourquin: I want to get it in northern California. Don't get down into the Coalinga or Bakersfield areas.

The Witness: No, I do not know of any in northern California.

The Court: I think we had better take the morning recess at this time. Ladies and gentlemen, will you bear in mind the instructions of the Court.

(Recess.) [755]

Q. (By Mr. Bourquin): Mr. Wents, did you consider that the Richfield Oil Company, following its exploration in Potrero Hills No. 1, No. 2, and No. 3, had obtained sufficient information to appreciate what they were dealing with?

A. I gave that some weight.

(Testimony of John H. Wents, Jr.)

Q. Did you figure that on any leases that are around there?

A. Not necessarily.

Q. It wouldn't be a concern likely to be over-reached, would it?

A. All of the concerns make mistakes.

Q. All of the concerns make mistakes. Did you consider that Richfield over there, following its pressures, gas, blow-outs in the Potrero Hills, abandoned the wells leaving them go to the lessor to offer for a dollar an acre?

A. No, I did not consider that to the full extent of the way your statement was made. Let me explain that, your Honor. Oftentimes the property, or potential of possible oil property is sold for a higher price prior to development and production than after production has been established; that is between oil companies and individuals who should know what they are doing.

Q. You figured that you might take a gamble.

A. Gamble is one word for it. Speculation is another word for it.

Mr. Bourquin: I think that is all.

Further Direct Examination

By Mr. Scampini:

Q. Just one question, Mr. Wents. When you based upon your experience, is it the opportune time for the sale of [756] the leasehold estate by a lessee to a purchaser willing to buy and having

(Testimony of John H. Wents, Jr.)

knowledge of the facts and circumstances surrounding the activities on the property?

A. Well, there are a number of opportune times.

Q. Please name them.

A. The first opportune time for the sale is as of the time a company acquires a lease for development of a property. The second is after the actual drilling commences on the property. Now the lowest price paid is at the first time, and the higher price is generally paid as of the second time I mentioned. Thirdly, as the shows of a well are understood by the general public or lessor, that is generally the price paid then being a higher price even than before. Fourth, is as of when you have completed drilling, or when that is imminent, and, fifth, is after the time production has been actually established on the property. Now, between the fourth and fifth times, sometimes a more advantageous deal can be made purely from the showings than can be made after production might have been established.

Q. Would that reasoning also apply in the case of the purchase and sale of royalty interests of the lessors?

A. It would be the same series.

Q. With reference to the Bandini transaction that you referred to as being one of the transactions which you took into consideration in arriving at your conception of the fair value of this property, will you please state between whom that [757] transaction was entered into?

A. That transaction was entered into between C. G. Willis, who is the president of Basin Oil Com-

(Testimony of John H. Wents, Jr.)

pany and the General Exploration Company, and the Rio Honda Corporation jointly, with the purchaser being the Shell Oil Company of California.

Q. On what date did the transaction take place, on or about?

A. May, 1945; I believe sometime about that time.

Q. With what did the transaction concern itself?

A. It concerned itself with certain leasehold interests and a well which had been drilled to a certain depth.

Q. Was the well on commercial production at the time the transaction was negotiated?

A. No, it was not.

Q. How much acreage was there embraced within the transaction of the leases?

A. Several hundred acres.

Q. What was the consideration paid for the assignment of the leases by the owners to the purchaser?

A. The Shell Company paid——

Mr. Bourquin: Your Honor, I think that this last reference to what has been paid down in known oil country like Kern County and Los Angeles Country is very remote and speculative to apply to this transaction, and we object on that ground, speculation and remote. It does not meet the test as the Supreme Court has announced for ascertainment of market value.

Mr. Scampini: We are dealing in this present case with like transactions as on the subject

(Testimony of John H. Wents, Jr.)

property. There is not [758] any substantial difference between transactions in oil and gas leases with respect to gas fields than there is with respect to oil fields. One is a concomitant of the other.

The Court: I don't think this is entirely competent from the point of view of proximity, nor competent from the point of view of redirect examination. I will sustain the objection. Counsel merely asked whether or not the witness based his opinion on what the transactions were that he based his opinion on. He located them geographically, but counsel did not ask him what the transactions were. He was merely trying to establish whether or not the transactions upon which the witness based his opinion were geographically in northern California or southern California. I will sustain the objection.

Mr. Scampini: I now make offer of proof as to the nature of the transactions, may it please the court.

The Court: Well, it is not necessary for you to do that.

Mr. Scampini: Very well, for the purpose of the record——

The Court: I have sustained the objection. If I am in error on that it can be corrected by a higher court. I just want to ask another question. I wanted to satisfy my curiosity as to some of these matters of royalty interest. I think you said that you appraised the royalty interest of Maria Faria at 12½ per cent in the 208-acre tract at \$65,250.

A. I believe something like that.

(Testimony of John H. Wents, Jr.)

Q. That is at the rate of \$5000 a percent, approximately? [759] A. Yes.

Q. Do you happen to know what the highest rate per cent that has ever been paid for lessors' royalty interest in the State of California is?

A. No, I don't but I know of a sale as high as \$140,000 a per cent in land not proven yet. That was at Coalinga.

Q. Do you know what the highest per cent that has ever been paid the lessor royalty interest in either the Kettleman fields or Coalinga was?

A. \$140,000 in Coalinga. With respect to leasehold interest in Kettleman Hills the Amerada Petroleum Corporation purchased from the Union Oil Company one-half of a 160-acre lease for the sum of eight million dollars, four million dollars in cash and four million dollars out of oil.

Q. That was on the basis of a property already proven?

A. No, that had not been drilled at the time of the sale.

Q. It hadn't been drilled?

A. No, not that particular lease, had not been drilled at the time, according to the information I have. That was the Amerada King lease.

The Court: I have no further questions.

Mr. Scampini: That is all.

Mr. Bourquin: That is all.

(Defendants rest.)

Mr. Bourquin: I will call Mr. Crisman. [760]

CHESTER C. CRISMAN

called as a witness on behalf of the plaintiff; sworn.

The Clerk: Will you state your name to the court and jury?

A. Chester C. Crisman.

Direct Examination

By Mr. Bourquin:

Q. Mr. Crisman, what is your occupation or business?

A. I am a special agent for the Federal Bureau of Investigation.

Q. Where is your station or division assignment?

A. I am assigned to the Los Angeles Field Division, but I live and work in Bakersfield.

Q. Did you in the course of your work as an investigator for the Federal Bureau of Investigation have occasion to interview Mr. E. A. Bender at Bakersfield recently?

A. Yes, I did.

Q. Can you tell us when and where it was that you interviewed the gentleman?

A. I interviewed him at his office in Bakersfield. I can't recall the exact date, but, roughly, it was, I believe in November of—October or November of 1946.

Q. Did you interview him concerning the matter that we have here under discussion?

A. Yes.

Q. Did you take a statement from him?

A. No, I did not. You mean a written statement?

Q. I mean did he discuss the matter with you and did you make a memorandum or report of it?

A. Yes, I did.

(Testimony of Chester C. Crisman.)

Q. Can you tell us, Mr. Crisman, what Mr. Bender told you at [761] that time concerning their operations on this Cal Bay lease? A. Yes.

Mr. Scampini: May it please the Court, we object to the question as being improper impeachment. The foundation has not been laid.

The Court: Well, see if my memory is correct. Wasn't the witness Bender interrogated by Mr. Bourquin as to a conversation with the agent?

Mr. Scampini: Yes, your Honor. I think the proper form of impeachment would be to ask the witness whether certain questions were asked of Mr. Bender and whether Mr. Bender did or did not make certain answers.

Mr. Bourquin: I can do that. I was shortening the matter, but we can follow that if your Honor thinks I should.

The Court: Read the question.

(Question read by the reporter.)

The Court: I think, strictly speaking, counsel's objection may be good. Counsel says he was doing it to shorten time.

Mr. Scampini: I know, but rambling along like this——

The Court: Very well. Ask the specific question.

Q. (By Mr. Bourquin): On the occasion of the time in question that you mentioned, Mr. Crisman, did Mr. Bender tell you that the equipment employed in the drilling of the Cal Bay Corporation here had been unloaded on the concern by one Harold Henry? [762]

(Testimony of Chester C. Crisman.)

Mr. Scampini: We object to that as leading and suggestive.

The Court: A leading question can be asked in impeachment.

Mr. Scampini: We will withdraw the objection.

The Court: The witness should be asked the precise question.

Mr. Scampini: We will withdraw the objection.

The Witness: Would you repeat the question?

(Question read by the reporter.)

A. That's right, he told me that.

Q. (By Mr. Bourquin): Did Mr. Bender tell you on that occasion that the whole thing originated in a fraud, by a fraudulent desire by Mr. Henry to unload some old machinery?

Mr. Scampini: Mr. Bender denied making that statement. It is not proper impeachment.

The Court: I will overrule the objection. It is proper impeachment.

The Witness: Shall I answer?

The Court: Yes.

The Witness: Yes, Mr. Bender made that statement to me.

Q. (By Mr. Bourquin): Did Mr. Bender tell you on that occasion that Mr. Bender had sold Mr. Faria on the idea that there was some oil up there at the Cal Bay lease where he could use that rig?

A. Yes, he told me that.

Q. Did Mr. Bender tell you that Mr. Henry had told him that [763] he had located Mr. Faria as a sucker for his machinery?

(Testimony of Chester C. Crisman.)

A. Yes; he made that statement to me.

Q. Did Mr. Bender tell you on that occasion that any competent man would know they could not get any oil in that country?

A. I believe Mr. Bender's statement was that any competent oil man would know they could not get oil in that country because it was gas country.

Mr. Bourquin: That is all.

Cross-Examination

By Mr. Scampini:

Q. Mr. Crisman, what was the object or purpose of your checking on Mr. Bender?

A. I went to see Mr. Bender to see if he could help me locate any members of the drilling crew who had been employed on this rig.

Q. What did you want to locate any of the members of the drilling crew who had worked on this rig?

A. I wanted to interview them regarding what had happened at the time the well blew out.

Q. Who wanted you to make the investigation?

A. Well, I don't know just exactly how to answer that. I was requested by my office, my supervisors in Los Angeles, to make it, and they had in turn been requested by the San Francisco office.

Q. Were you able to locate any of the boys who had worked on the rig?

A. No. I was unable to locate any of them in Bakersfield.

(Testimony of Chester C. Crisman.)

Q. Did you locate any of them anywhere else?

A. I personally [764] did not, no. I obtained some information where some of them could be located and forwarded that information to the proper field division covering those areas, and I understand that some of them have been interviewed as a result of that information, but I personally did not.

Q. The only person you checked on was Mr. Bender, is that correct?

A. I talked with Mr. Bush.

Q. What was the object of going to see Mr. Bender? Was it merely to find out the names of persons who had worked on the rig?

A. I talked to Mr. Bush——

Q. No. I did not say Bush. What was the object of talking to Mr. Bender, merely to find out the names of workers on the well?

A. That was my purpose in seeing Mr. Bender, yes.

Q. Did you interrogate Mr. Bender in respect to his idea as to the unloading of this machinery on Mr. Faria?

A. Mr. Bender volunteered that information to me.

Q. Did you send it over there to your captain, as it were? A. Yes.

Q. What did you say when Mr. Bender made those remarks?

A. I don't recall. If you mean did I express any opinion or anything of that sort——

Q. Yes. A. I did not.

(Testimony of Chester C. Crisman.)

Q. Do you know whether or not in the course of preparing the defense to this action you and your assistants were asked to check with every person that had had anything to do with the drilling of this well?

A. Do I know of my own personal knowledge whether or not we were asked?

Q. Yes.

A. Of my own personal knowledge I do not know, no.

Q. You were not there for any other purpose, were you? A. At Mr. Bender's office?

Q. Yes. A. No.

Q. You did not see Mr. Bush for any other purpose, did you? A. No.

Mr. Scampini: That is all.

Mr. Bourquin: That is all. Call Mr. Marshall.

THURMAN MARSHALL

called as a witness on behalf of plaintiff; sworn.

Q. (By the Clerk): State your name to the court and jury. A. Thurman Marshall.

Direct Examination

By Mr. Bourquin:

Q. Where do you live?

A. Calistoga, California.

Q. What is your present business or occupation?

A. Operating engineer.

(Testimony of Thurman Marshall.)

Q. Employed by whom?

A. Humbert Brothers.

Q. Have you ever been engaged in the business of oil or gas [766] well drilling?

A. Yes, both.

Q. Were you employed at the Cal Bay well when the exploration of it was made there in 1944?

A. Yes, sir.

Q. Had you had any earlier experience in oil or gas well drilling than that? A. Yes, sir.

Q. What was it? How much?

A. Well, I worked about a year and a half, I would say, around Bakersfield, Riverdale, Colusa, and Rio Vista.

Q. All prior to your going to work over at Cal Bay? A. That is right.

Q. About when was it in 1944 that you went to work there, Mr. Marshall?

A. It was either October or November. I don't remember the exact date.

Q. Can you trace *it reference* to the superintendent or head driller that you worked under there?

A. The head driller at the time I went to work I believe was Pete Anderson, as I knew him.

Q. Did he continue there all the time that you worked there? A. No, sir.

Q. Who succeeded him as your superior?

A. I don't know what his name was. I forgot his name. I can't recall his name.

Q. Who was your last superior in that work over there? A. L. R. Parks.

(Testimony of Thurman Marshall.)

Q. During the period of October and November, Mr. Marshall, what shift were you working?

A. We rotated shifts. [767]

Q. Were they working three shifts?

A. That is right.

Q. Was the job being pushed? A. No.

Q. What did you note as to the progress or push of the job over there during the period that you worked there?

A. State the question again, please?

Q. What did you observe as to the progress or the push for progress of the work while you were there?

A. Well, there wasn't anyone in a hurry.

Q. Nobody in any hurry. What did you observe during the drilling there in October and November, 1944, with respect to the operation, itself?

A. I don't get the meaning of that question.

Q. Let me ask you this: Were you working there at the time this so-termed blow-up occurred?

A. Yes, sir.

Q. What shift were you working at that time?

A. Daylights from 8 to 4.

Q. Were you present when the blow-out occurred? A. Yes, sir.

Q. What duties were you performing on that shift at that time?

A. I was a rotary helper. At the moment of that time we were mixing mud.

Q. At the moment of that time you were mixing mud? A. That is right.

(Testimony of Thurman Marshall.)

Q. Were you in proximity to the well in that duty? A. Yes, sir.

Q. You were right there? A. Yes, sir.

Q. Will you just tell us what happened on that occasion, when it happened, what happened, and what you saw?

A. Well, just [768] like any other well, it creates pressure. What it was, nobody knows until there is tests made of it. And it just blew out a bunch of old black oil. We had spotted oil in there prior to that to loosen the drill pipe. The drill pipe had been stuck on account of heaving shale, and blew out a bunch of that old black oil we had pumped in there, and then there was a small amount, a small quantity of green oil.

Q. What proportions did the blow-out assume, the size and the time? Can you tell us that?

A. Well, as far as time, it would mean anywhere from, well, you can't judge hardly the time of them—anywhere from three minutes, maybe four minutes, whatever time it takes to close out the blow-out equipment.

Q. It blew, though, for three or four minutes?

A. Yes, sir.

Q. How did it blow? In one spurt, or successive spurts? A. Successive.

Q. Describe it to us. What did it blow to or on?

A. Well, it just blew up on the Kelly out of the hole, just spurted up, kind of like a geyser, or whatever you want to call that.

(Testimony of Thurman Marshall.)

Q. How high did it blow?

A. I would say at the highest point maybe fifteen feet.

Q. And it came in successive spurts for a period of about three or four minutes?

A. Yes, sir.

Q. Was it then that the well was closed down?

A. Pumped mud in the hole to relieve the pressure.

Q. What did the hole give up when it blew out? You stated [769] it gave up black oil and some little green oil, and what else?

A. Mud, sand, gravel.

Q. Was there any sand there that you could identify or determine the character of?

A. No, sir. A little heaving shale came out with it.

Q. Why do you say you could not identify the character of the sand?

A. There wasn't enough quantity of it to analyze.

Q. Had you observed any gas showing there in the course of drilling?

A. A small portion, yes.

Q. At the time of the blow-out did gas make itself evident?

A. A mighty small quantity.

Q. After the blow-out was subdued, after the three minutes, did you continue to get any evidence of gas?

A. Not enough that you can tell it, no.

Q. Will you tell us whether or not the well gave up any water at that time, or before?

A. Well, evidently, yes.

(Testimony of Thurman Marshall.)

Q. What evidence was there in that respect?

A. Well, the mud was thinning all the time.

Q. The mud was thinning all the time?

A. That shows water, shows salt water.

Q. What did you observe or what was done by the drilling crews when you were present to meet the situation of mud thinning all the time?

A. Added aquagel in order to bring the viscosity back. Put Baroid in the mud, mixed it up, in order to bring the weight up. [770]

Q. Did you use much of that?

A. Quite a bit, yes.

Q. Did that continue, this thinning of the mud, with the water and the addition of those materials right up to the time of the blow-out?

A. Yes, sir.

Q. By the way, you spoke of the sticking of the drill pipe. In the handling of the matter there did you and the others know where the drill pipe stuck?

A. Well, I guess we knew as close as anyone. We could take the measurement of the drill pipe, measure what we had out of the hole at the time, and figure your length, the depth of your hole, and subtract the length of what was out from the depth of the hole, and tell at what depth the pipe was stuck.

Q. What conclusion did you and the others there arrive at in this respect?

A. Heaving shale.

(Testimony of Thurman Marshall.)

Q. What conclusion did you reach as to where the pipe was stuck?

A. Well, they have regular figures for it. I don't know just the regular footings. It was around 4700 feet.

Q. Were you there in the process of the cutting of the window and putting in of the whipstock?

A. No, sir.

Q. You were not. You were aware they were drilling through whipstock, did you?

A. I knew they were, yes.

Q. What relation did you find the whipstock had to the place where the pipe was stuck?

A. Well, it was just about the same depth.

Q. It was stuck about the depth of the whipstock. If you [771] remember, how long before this blow-out occurred was it that the pipe was stuck? Was it a few hours, or a few days? Had you in your experience worked around explorations that had experienced blow-outs before?

A. Yes, sir.

Q. Did you, from your experience, reach any conclusion as to the possibilities from this fact that the blow-out occurred?

Mr. Scampini: We object to the question. The proper foundation has not been laid. This person has not qualified himself as an expert.

The Court: I think that objection is good.

Mr. Bourquin: You may cross-examine.

(Testimony of Thurman Marshall.)

Cross-Examination

By Mr. Scampini:

Q. Mr. Marshall, were you interviewed prior to coming to testify at this trial by an agent of the Federal Bureau of Investigation?

A. Yes, sir.

Q. Do you know the name of the person who interviewed you?

A. No, sir.

Q. Did he show you his badge?

A. Yes, sir.

Q. Did he ask you questions?

A. Yes, sir.

Q. What did he say to you?

A. He asked me my name, introduced himself and asked me if I worked on this well, and he asked me if I knew where any of the men was at the time that had worked on the well.

Q. Anything else?

A. That is practically all.

Q. Did he ask you what you had observed in the course of your [772] activities on the well?

A. No, sir.

Q. Did he ask you whether you had ever been convicted of any trouble before?

A. No, sir.

Q. When you went to work for the Cal Bay Corporation what was the scope of your duties?

A. I was a roughneck.

Q. A roughneck works where in relation to the rotary table?

A. Well, they are all called roughnecks. I was a helper.

(Testimony of Thurman Marshall.)

Q. How long had you been working in oil fields before?

A. I believe I answered that question a while ago. Around a year and a half.

Q. And you had always been a helper, had you not?

A. No, sir.

Q. What were you before?

A. I had worked on a derrick, and I had worked on a cathead.

Q. The cathead is up above in the derrick?

A. No, sir.

Q. Where is the cathead?

A. The cathead is on the opposite side from the driller.

Q. I stand corrected. What were you drilling in connection with the activities of the drilling going on on the Cal Bay? Did you keep the log?

A. No, sir.

Q. Did you do anything with building up the mud?

A. Yes, sir.

Q. Do you know what weight mud was being used at or about November 25, 1944?

A. Well, the mud ran anywhere from 105 to 110-pound mud.

Q. Is that heavy mud, in your experience?

A. Extra heavy.

Q. Is extra heavy mud necessary to control high pressures at [773] the bottom of the well?

A. Yes, sir.

(Testimony of Thurman Marshall.)

Q. Had you observed any oil or gas showings in the ditch during all this period of time that you were working prior to November 25th?

A. A small amount, yes.

Q. Had you observed any incident where the ditch was ignited with a match? A. No, sir.

Q. Did you observe any instance where some of the sand had been taken from the ditch and then ignited? A. No, sir.

Q. Did you know Dick Stevenson at the time you were working there on November 29th?

A. I knew him as a man coming backwards and forwards to work, and that is all.

Q. Did you see him there immediately after the blowout on November 29th? A. No, sir.

Q. Did you see a man go into the ditch and throw a lighted newspaper on the ditch and the entire ditch ignited? A. No, sir.

Q. Were you there at or about two o'clock in the afternoon of that day? A. Yes, sir.

Q. What were you doing?

A. I was helping, whatever the driller told me to.

Q. What were you doing when the well first blew in? A. Mixing mud.

Q. How far is the mud mixer or mud ditch from the rotary table on the derrick?

A. I would say 20 or 25 feet.

Q. Could you see from the mud ditch what was coming out of the hole of the well?

A. Yes, sir. [774]

(Testimony of Thurman Marshall.)

Q. Did you see any gas coming out of the hole of the well?

A. Not enough to tell it, no, sir.

Q. Not enough what?

A. Not enough that you could tell it, no.

Q. But you could see some oil?

A. Yes, sir.

Q. You said you could see some green oil?

A. A small quantity, yes.

Q. Where did you notice it?

A. On the rotary table.

Q. Was pressure applied immediately to the pumps for the purpose of closing the gas control heads as soon as the blow-out occurred?

A. Yes, sir.

Q. How much pressure was applied for the purpose of closing the gas control head?

A. I don't know.

Q. Do you know how much pressure was indicated on the meters or registers on the derrick at the time of the blowout?

A. You mean pump pressure?

Q. Yes. A. I do not, no.

Q. Now, you say you worked on wells that blew out? A. Yes, sir.

Q. Where did you work on a well that blew out?

A. Capital No. 1 at Colusa, California.

Q. For whom?

A. Capital Oil Company.

Q. When?

(Testimony of Thurman Marshall.)

A. Well, we drilled two wells up there. One was in the first part of May, either 1943 or '44—I don't recall the date—and working for O'Kane & Brane.

Q. The well was being drilled by the Capital Company, you say? [775]

A. They was paying for it. O'Kane & Brane was drilling it.

Q. Is Capital Company a subsidiary of Trans-america Corporation and Bank of America?

A. I do not know.

Q. How long did it take to close the gas control head on the Maria well when the well blew out?

A. To completely close it, we did not.

Q. Do you know any reason why you were not able to completely close it?

A. Sand and heaving shale on the inside of the rubbers in there, that they would not close tight enough to hold the pressure, to keep it from flowing out.

Q. Were you able to look into the gas control head and in there see heaving sand between the rubber and the drill pipe?

A. After it stops blowing out.

Q. Where were you standing in order to be able to look into the gas control head?

A. On top of the rotary table.

Q. And you would be able to see in between the rubber and the drill pipe?

A. Yes, sir.

Q. How much pressure had been applied to these rubber holdings in order to compress them against the drill pipe?

A. I don't know.

(Testimony of Thurman Marshall.)

Q. Would you say it was less than 1500 pounds?

A. On the rubbers?

Q. On the rubbers.

A. To press them around the drill pipe?

Q. Yes. A. I wouldn't say.

Q. But you are positive that you were able to see between the [776] rubbers and the drill pipe?

A. Surely, you can see through them when they are cut through.

Q. When they are cut through?

A. Yes, sir.

Q. Were they cut through?

A. I have seen them cut through, yes.

Q. But were these rubbers cut through on this occasion? A. That I do not know.

Q. Have you ever been convicted of a felony?

A. No, sir.

Q. How often did you see this well surging after the first initial blow-out during the period of, say, the next two hours?

A. How often was it surging?

Q. Yes.

A. I wouldn't say. No definite time on that.

Q. Have you any idea of how many times it tried to break loose?

A. It would surge. You could tell that from the blow pipe on the mud.

Q. How long did it keep that up?

A. No definite time on that. I won't quote.

Q. Was it still going on when you left the shift?

A. No.

(Testimony of Thurman Marshall.)

Q. When had it stopped?

A. I don't know when it stopped.

Q. Did it stop when the mud had been built up to a weight of 116 pounds per cubic foot?

A. I didn't see 116 pound mud on the well.

Q. Did you see 110?

A. I saw 109, 110, and 112-pound mud weight.

Q. Did you see Mr. Mohr working at the well building up the [777] mud? A. Mr. Mohr?

Q. Yes, of the Baroid people.

A. Yes, sir.

Q. Was he making tests in your presence as to the weight of the mud?

A. He was weighing the mud and taking the viscosity of the mud.

Q. Did you make any tests as to the weight of the mud or the viscosity of it?

A. I have weighed the mud, yes, sir.

Q. You have mixed it, haven't you?

A. Yes, sir.

Q. But you have never weighed it?

A. I have weighed it.

Q. What was the highest weight you have observed? A. 112 pounds.

Q. How many times did the F.B.I. man come to see you? A. One time.

Q. Were you asked or ordered to come down here to testify? A. Yes, sir.

Mr. Scampini: No further questions.

(Testimony of Thurman Marshall.)

Redirect Examination

By Mr. Bourquin:

Q. Mr. Marshall, what happened to that well, the Capital Company's, where you saw the blow-out? What happened to that?

Mr. Scampini: That is incompetent, irrelevant, and immaterial, if it please the court, and on redirect examination not proper. Furthermore, this witness is not a qualified man to testify as to what happened to any well except where he worked as a helper.

The Court: He is qualified to testify to what he saw. You [778] asked him if he ever saw the same thing happening at another well. He said yes, he did.

Mr. Scampini: Seeing a well blow out does not necessarily mean he knows what happened to the well thereafter. There may be many reasons why the well is not in production. There may be a collapsed casing, as here.

The Court: That may be true. We may be getting into collateral fields there, counsel.

Mr. Bourquin: That is all. Thank you, Mr. Marshall.

The Court: We will take the noon recess at this time, ladies and gentlemen, and resume at two o'clock. Please bear in mind the admonition of the court.

(A recess was thereupon taken until two o'clock p.m. [779])

Afternoon Session, February 4, 1947

2:00 P.M.

The Clerk: United States vs. Central Land in Contra Costa County.

Mr. Bourquin: Mr. Marshall was on the stand.

The Court: Had you concluded, Counsel?

Mr. Scampini: I will excuse any further examination.

FRANK MORRIS

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name to the court and jury?

A. Frank Morris.

Direct Examination

By Mr. Bourquin:

Q. Mr. Morris, you live where?

A. Sutter Creek.

Q. Sutter Creek, California. What occupation are you engaged in?

A. Mining.

Q. Mining. Did you work for Cal-Bay Company in the exploration that was done on the property here under discussion?

A. Yes. I went to work for Joe in the last part of October, some time.

Q. Of what year?

A. 1944.

Q. How long did you work there, Mr. Morris?

A. Oh, a couple of months.

Q. A couple of months?

A. Until they moved out.

(Testimony of Frank Morris.)

Q. Until they moved out. Had you any earlier oil and [780] gas drilling experience?

A. Quite a bit.

Q. Will you tell us briefly what experience you had before?

A. I had about five years of it.

Q. About five years in California?

A. Yes.

Q. For what concerns?

A. Well, all up and down the coast, all over the rig.

Q. All over the rig? A. Yes.

Q. You mean all places on the rig?

A. Yes, all but driller.

Q. What companies had you worked for before?

A. Well, I worked for several different companies, Standard, in drilling explorations, Brown, Rocky Mountains, and for others, little small rigs.

Q. Were you working at the well November 29 when the blow-out occurred there? A. Yes.

Q. What shift were you working on there?

A. Daylight.

Q. Daylight shift? A. Yes.

Q. Were you there when the well blow-out occurred? A. Yes.

Q. What others were present, if you can tell us when that blow-out occurred?

A. Just the crew.

Q. Just the crew? A. Yes.

Q. By the way, who was the superintendent of the well at that time?

(Testimony of Frank Morris.)

A. Well, there wasn't any; you don't call the superintendent. You call them pusher, May.

Q. Was Mr. May there when the blow-out occurred? A. No.

Q. He was not there? A. No. [781]

Q. Did you see him there subsequently?

A. Yes, he come shortly after the well was shut and killed.

Q. He came shortly after the well was shut and killed. A. Yes.

Q. Did you discuss with him and he with you, in the matter of what had occurred?

A. He wanted to know what happened. I told him, and he went back to hunt Joe.

Q. You said the crew was there. That was yourself and who else?

A. Lead tong boy, pipe roller, the driller, the derrick man, and myself.

Q. How about the man that fired the boilers?

A. He was down over the hill.

Q. Do you know where he was when the blow-out occurred?

A. He was down around the pots where he belonged.

Q. Did he come up to the well during the time the blow-out took place?

A. No, he wasn't up there when the blow-out was going on.

Q. Tell us what this blow-out would consist of and how long it existed.

(Testimony of Frank Morris.)

A. Well, it was just like any gas well coming in, it will pop and bubble and it belched quite a bit, and you throw a little mud in there.

Q. How long did that go on before the well was——

A. I would say about ten minutes.

Q. Did you see what came up in the blow-out?

A. Mud.

Q. Mud? A. Mud and a little shale.

Q. Mud and a little shale. See any sand?

A. Well, that is [782] hard to find in mud, rotary mud.

Q. Did you identify any?

A. No; I didn't look.

Q. Was there some oil?

A. Well, there was a little oil. Before that we had been circulating oil and that might have been in the hole with it.

Q. Were you able to identify what the character of the oil was that showed up in the well?

A. No; just black oil.

Q. Old black oil? A. Yes.

Q. You had spotted oil there before, had you?

A. Yes.

Q. Black oil? A. Yes, a couple of times.

Q. A couple of times? A. Yes.

Q. Mr. Morris, what do you mean by the term "clabber?"

A. Well, when the mud, the gas meets the rotary mud it will make it thick, it won't run.

(Testimony of Frank Morris.)

Q. Does it present an occurrence like we know of clabber in clabber milk?

A. Yes, just like something in it, it won't run down the mud ditch, you have to shove it.

Q. Prior to the time of the blow-out had you observed, had the mud clabbered in that well?

A. Well, it had belched several times while I was there. I was not there when the well first started. I was there later on. It belched a few times and showed signs of gas. One Sunday they had some visitors there and one of the visitors, he dropped a match on the mud ditch and it burned.

Q. When was that?

A. I don't know. I can't remember the date. [783] That was a Sunday, and a bunch of visitors were there.

Q. You say prior to the blow-out the well had belched several times?

A. Oh, yes, and belching, you can't get right up to it, that is a big body of gas, and nobody knows that clabbering, mud—slat water mixed in with your gas, that will clabber, too.

Mr. Scampini: I move to strike out the statement of the witness on the ground he is not qualified to pass upon such matters.

The Court: The statement of opinion of the witness may go out.

Q. (By Mr. Bourquin): Had you seen wells blow out before? A. Yes.

Q. Had you seen any in Northern California?

(Testimony of Frank Morris.)

A. I seen one gas well over in Rio Vista and I saw one up around Colusa, there; his was gas and sulphur water, mixed.

Q. Do you own any stock in this Cal-Bay, or did you buy any? A. No.

Mr. Bourquin: I think that is all.

Cross-Examination

By Mr. Scampini:

Q. Mr. Morris, were you interviewed by an agent of the Federal Bureau of Investigation?

A. One came to my house, yes.

Q. When did he come to your house?

A. About, oh, two or three weeks ago, I guess.

Q. Did he show his badge to you?

A. Yes.

Q. Did he tell you what he wanted to see you about?

A. Yes. He wanted to know if I had worked for the Cal-Bay Corporation. I had forgotten the name. I know the well I worked for up there. I told him yes.

Q. Did you recall the incidents that took place during the period of time you were working for Cal-Bay when he spoke to you?

A. Yes. When he mentioned about this well blowing out, yes.

Q. That brought it to your memory, is that correct? A. Yes.

Q. Are you sure that Mr. May was not there on the derrick? A. Yes.

Q. At what hour of the morning did the well begin to blow out?

(Testimony of Frank Morris.)

A. I couldn't tell you the exact time. It was about the middle of the day.

Q. Where was Mr. May at or about eleven o'clock of that day? A. I do not know.

Q. When did you first see Mr. May at or near the derrick? A. The time?

Q. Yes.

A. I don't know what time it was.

Q. What were your duties or activities on that day? A. I was cathead boy there.

Q. Where is the cathead in relation to the drill pipe or rotary table?

A. It is over by the rotary chain, opposite from the driller.

Q. What were you doing, helper?

A. No. I was running the [785] cathead.

Q. You were running the cathead. Who was doing the drilling?

A. That young fellow, Parks.

Q. Mr. Parks. Who was working there in the crew besides?

A. Well, there was a derrickman, I forget his name, another short fellow, and Marshall and myself, and another slim kid who lived in Antioch, there, a big tall boy.

Q. Mr. McBride? A. Yes.

Q. You recall him? A. Yes.

Q. What did you first observe when the well began to blow out?

A. You mean the way it acted?

(Testimony of Frank Morris.)

Q. Yes.

A. Well, it was bubbling, and then it began to crack and pop.

Q. How loud a pop?

A. Pretty good crank.

Q. Like a roar?

A. Yes, it rumbled a little bit.

Q. How high up into the air did it——

A. Did it blow?

Q. Did it blow?

A. Well, it went, I would say, to the finger.

Q. How high up is that?

A. About half way.

Q. About half way up the derrick?

A. Yes.

Q. The derrick is a 122-foot derrick?

A. I don't know the length of it.

Q. Did it not appear to you to be a 122-foot derrick?

A. I never give it a thought. I never thought how high the derrick is.

Q. What weight of mud was being used at the time, just prior to—— [786]

A. At the time the well came in?

Q. Yes. A. 108, 109 pounds.

Q. Had the well been in course of circulation for the previous two days?

A. Yes, it was circulating.

Q. The pipe was stuck, was it, a couple of days?

A. We started out of the hole and stuck the pipe, yes.

Q. The oil that you spotted into the well, as you

(Testimony of Frank Morris.)

boys call it, had been spotted two days before the blow-out, had it not? A. A few days, yes.

Q. All this while the well had been circulating mud through the drill pipe and up the sides of the casing, back to the surface?

A. Yes, goes down and comes out.

Q. In your opinion, and based on your experience, would not the oil which had been spotted into the well two days before have been circulated out prior to eleven o'clock on November 29th?

A. Yes, the biggest part of it would have been. Of course, there would be a little bit left in the crevices.

Q. Did you see any green oil come out of the well during the blow-out? A. No.

Q. Did you hear Marshall to the effect that some green oil came out of the well? Do you disagree with him?

A. Well, I didn't pay no attention. I never seen no green oil.

Q. Did you pay any attention to what was coming out of the nozzle of the well?

A. "Nozzle?" What do you mean by "nozzle?"

Q. Well, out of the Kelly.

A. Well, there was nothing coming out of the Kelly.

Q. Where was the gas——

A. Coming out around the pipe.

Q. From down below?

A. Yes, coming out the casing.

(Testimony of Frank Morris.)

Q. Isn't the gas control head down below the derrick floor? A. Down the gate, yes.

Q. Did you go down there and take a look at the gas control head? A. No.

Q. Do you know what pressure they used for the purpose of closing the gas control head?

A. You mean the water pumps?

Q. Yes.

A. The last time I looked at it it was 750 pounds and they pumped more.

Q. Do you know about how high it was?

A. No.

Q. Who was taking care of the pumps or the pumping? A. You mean the mud pumps?

Q. Yes. A. The derrick man.

Q. Where were you? A. On the floor.

Q. What did you do for the purpose of bringing the well under control?

A. The derrickman went out—I closed the blow-out vent.

Q. How much pressure did they use to do that?

A. I pumped up 750 pounds and he pumped afterward. I could not tell you the exact pressure.

Q. Did you see Mr. Mohr, of the Baroid Sales Division, appear [788] on the scene?

A. He came just before we——

Q. What did he do for the purpose of bringing the well under control?

A. Well, I can't say he done anything, or I didn't see him do anything.

(Testimony of Frank Morris.)

Q. Who built up the weight of the mud?

A. The derrickman and the roughneck.

Q. Do you know to what weight they built it?

A. 116 pounds.

Mr. Scampini: That is all.

Redirect Examination

By Mr. Bourquin:

Q. Mr. Morris, at the time the mud belched and blew out, did you see any gas come out?

A. You can't see gas.

Q. During the time that you were there at the well had you seen any gas, any free gas come out?

A. No. That gas is not liquid around there, it is just like butane.

Q. You mean that gas is a dry gas?

A. Dry gas, you can't see it. They use it, put it right into the motor or stove and burn it.

Q. You saw no gas coming from the well at the time the mud blew out?

A. No, but you could smell plenty of it.

Mr. Bourquin: That is all.

Mr. Scampini: No further questions. [789]

CAPTAIN E. E. SAUNDERS

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name?

A. Captain E. E. Saunders.

(Testimony of Captain E. E. Saunders.)

Direct Examination

By Mr. Bourquin:

Q. Captain, are you an officer of the United States Navy? A. Yes, sir.

Q. You have been with the Navy how long, Captain?

A. I reported back for active duty in December, 1940.

Q. Have you been on active duty ever since?

A. Yes.

Q. Captain, did you have anything to do with the establishment of the Government Arsenal in the hills behind Port Chicago?

A. Yes, I did.

Q. Will you just state briefly the assignment you had in that regard?

A. Well, I am a member of the Civil Engineering Corps whose responsibility is to design and construct naval shore establishments and facilities, and in that capacity I started the development of the project which is comprised of awarding contracts for engineers, architects, to prepare plans and specifications prior to the award of contracts for construction.

Q. You had charge of that ground work, did you? A. Yes.

Q. Where were you stationed at that time?

A. In the office of the Officer in Charge of Construction at Mare Island.

(Testimony of Captain E. E. Saunders.)

Q. Did you in that connection have to do with establishing the [790] survey for the project?

A. Yes. We awarded the contract, first by a *typographical* map and a perimeter description of that property which was needed for the establishment of a magazine. [790-a]

I reported in at Mare Island on the twelfth of May and Admiral Hussey, the chief of the Bureau of Ordnance, had looked the property over and had approved it as the location for the magazine on the day previous. I was placed in charge of the development to get it under way.

Q. Did you make the arrangements for the surveys to be made? A. Yes, sir.

Q. Did you arrange with the property owners for the surveys to be made?

A. Yes, in order to expedite the construction it was necessary for us to go into the property with the surveying crews to establish contours and grades. Prior to the approval of the project by the Secretary of the Navy and the release of funds for its construction, if any damage were done by the surveying crews to the property while going through their work, prior to the release of funds for the construction of the project, we would have no money to pay them their damages. Consequently, it was necessary to secure the permission of the owners for the surveyors to enter the property, since we could not proceed in any other way.

Mr. Scampini: I move to strike out the last portion of the witness' statement on the ground it is the conclusion of the witness.

(Testimony of Captain E. E. Saunders.)

The Court: It may go out.

Mr. Scampini: And self-serving. [791]

Q. (By Mr. Bourquin): Captain, did you obtain the permission of the property owners for the Navy surveyors to go in there and make the necessary surveys? A. Yes, sir.

Q. Can you tell us when that permission was obtained relative to the property owners of the property in question, namely, the properties of Mary Faria, Edward Faria, Mae E. Roche, Joseph Chevez, and Geraldine Faria?

A. We received that permission some time between the 20th of May and the 26th of May, 1944, at least, for a portion of those tracts. I can't identify them without a little research over the data which I have here.

Q. Have you data with you from which you can tell us you received that permission to enter and make the survey on the Mary Faria tract?

A. I think that was Tract 59.

Q. Tract 59 is right, Captain.

A. We maintain for ready reference——

The Court: Captain, just say if you can tell the time. That is all the attorney wants.

Q. When was that done?

A. As I said before, some time between the 20th of May, when the letter went out to the owners asking this permission, and the 26th of May, at which time we notified our surveyor that he was free to enter certain tracts, among them being 57, 58 and 59.

(Testimony of Captain E. E. Saunders.)

Q. 57, 58 and 59? A. Yes, sir.

Q. That would be the tracts as we know them here, of Edward [792] Faria, Mae Roche and Mary Faria? A. I believe that is correct.

Q. You say you had sought and obtained that permission before May 28, 1944? A. May 26.

Q. May 26, 1944? A. Yes, sir.

Q. You have a record of that?

A. Yes, sir.

Q. Captain, do you know Mr. Joseph Faria, who is here in court?

A. I have met him, yes, sir.

Q. You have talked with Mr. Joseph Faria or he with you, relative to the Navy's intended acquisition of that property. Can you answer that yes or no, if you will? A. Yes, I have.

Q. Can you tell us when, Captain, it was that you talked to Mr. Joseph Faria and he with you relative to that subject?

A. Not the exact date.

Q. How near would you be able to fix the time, or can you fix the time with reference to any event that you talked with Mr. Joseph Faria and he with you relative to the Navy's acquisition?

A. I know it was prior to the approval of the project by the Secretary. It is my impression it was before I was relieved of certain portions of my duties in that project. My best impression is it was in the middle of June.

Mr. Bourquin: You may cross-examine.

(Testimony of Captain E. E. Saunders.)

Cross-Examination

By Mr. Scampini:

Q. Captain, did you cause to be obtained [793] the consents of the property owners to this survey personally?

A. It was done by correspondence.

Q. Did you see the letters go out?

A. I wrote the letter.

Q. To whom did you write the letters in respect to Mary Faria's property or Edward Faria or Mae E. Dutra?

A. To them as the record owners in the property.

Q. Did you keep copies of the letters that you sent?

Mr. Bourquin: We have them.

Mr. Scampini: May I see them, please?

Mr. Bourquin: There is Mary Faria, Edward Faria, and Mae Roche (handing documents to Mr. Scampini).

Mr. Scampini: I now offer in evidence, if it please the Court, a letter dated May 20, 1944, from the Commandant's Office, Navy Yard, Mare Island, California, addressed to Mae E. Roche, Concord, California, reading as follows:

“Dear Madam:

“The Government wishes to obtain certain information which will be facilitated by having a survey party enter upon your property in the Clayton Valley east of Concord, California.

(Testimony of Captain E. E. Saunders.)

It is requested that you give us your permission for this period to make the desired survey by signing in the place indicated and returning the attached copy of this letter in the envelope furnished. Your prompt cooperation in granting this permission will be of [794] material assistance in forwarding an important war project.

“By direction of the Commandant,

“Very truly yours,

B. C. Bedell, Captain,

U. S. Navy Public Works
Officer.”

And underneath that appears the following:

“Permission granted May, 1944,” no signature.

The other two letters are exactly identical in form, and one is addressed to Mary Faria, Route 2, Box 120, Concord, California; and the other one is to Edward Faria, Clayton Road, Concord, California. Neither one of the copies delivered to me bears any date as to the permission granted or any signature. I will ask that they be marked as our exhibit next in order.

Mr. Bourquin: No objection.

(The documents in question were thereupon received in evidence and marked Defendants' Exhibit 34.)

[Defendants' Exhibit 3 4 appears on pages 1263-1264.]

(Testimony of Captain E. E. Saunders.)

Q. (By Mr. Scampini): Captain, did you receive the approval of any of these three property owners in writing to the making of this survey?

A. They each returned their form letter with their approval.

Q. Have you got it with you? A. No.

Q. Where is the returned copy signed by Mary Faria?

A. There was no value to those after the declaration of [795] taking had been made; consequently they have been destroyed.

Q. All three of those letters have been destroyed as far as the copy signed by the parties is concerned? A. I am afraid that is true.

Q. Are you certain in your own mind that you received back from these property owners that I have named their signed approval to the survey?

A. Positive.

Q. How many parcels of land were involved in this project? A. Two hundred or so.

Q. Did you receive consents from all of them?

A. Yes.

Q. To the making of the survey?

A. Yes.

Q. Without exception?

A. No, not without exception.

Q. Who did accept, if you recall?

A. There were one or two parcels where the crops were in such condition that if the surveyors entered it would ruin the crops and they withheld their permission.

(Testimony of Captain E. E. Saunders.)

Q. Did anyone call you up to find out what this survey was intended for, what is the object of the survey?

A. We had numerous calls from interested parties. Whether any of these particular people called, I could not tell you.

Q. When they did call, did you give them any information as to what were the purposes of the survey?

A. We referred them to the District Legal Office.

Q. As far as you know, of your own personal knowledge, no information was given to any of these inquirers, is that [796] correct?

A. I think the answer is "Yes" to that.

Q. In your discussion with Mr. Joseph Faria in the middle of June, 1944, did you tell Mr. Faria what the Navy intended to do?

A. I doubt if we gave him details. We would not have done that to anyone.

Mr. Scampini: That is all. No further questions.

Redirect Examination

By Mr. Bourquin:

Q. Captain, did you make a record or cause a record to be made in your office of the receipts of the permission to enter and make the surveys on these tracts we are talking about?

A. Yes, sir.

(Testimony of Captain E. E. Saunders.)

Q. Have you that record with you?

A. Yes, sir.

Q. Will you tell us just what the record consists of?

Mr. Scampini: I would like to see the record, Counsel.

Q. (By Mr. Bourquin): May I see it and show it to Counsel first, Captain?

The Court: What did you do, Captain, note on this map when you got the permission from a particular owner?

The Witness: Yes, sir.

The Court: How did you note it on the map?

The Witness: Colored the tract in red so that the blocks could be readily available where work could be continued.

The Court: So any block that is colored red on that map is the property of a person from whom you obtained consent [797] to make the survey?

The Witness: That is right.

Q. (By Mr. Bourquin): We will offer the diagram, your Honor.

Mr. Scampini: We object to it on the ground it is incompetent, irrelevant and immaterial.

The Court: Is it necessary?

Mr. Bourquin: I will withdraw the offer.

Mr. Scampini: No information was given to any of these property owners as to the purpose of the survey.

The Court: Naturally it was not. The Navy was not telling people what kind of projects it was building.

(Testimony of Captain E. E. Saunders.)

Mr. Scampini: There was no information given to any of the property owners that they intended to take of the property. Permission to survey does not constitute knowledge of an intended condemnation, your Honor.

The Court: I am not intending to rule on that.

Mr. Scampini: Pardon me.

Mr. Bourquin: I think that is for the Jury to determine.

The Court: It is some notice, I suppose. During the war people knew when the Army or Navy came in to look over your property there might be some question with respect to its being taken.

Q. (By Mr. Bourquin): Captain, in that connection, in connection with the receipt of permission from these people we talked about, Mary Faria, Edward Faria and Mae Roche, did you make or cause to be made in your office any further records on the map of that fact, that that permission had been received?

A. The surveying contractor was looking to us for instructions, and as fast as these permissions were received by us we would write him—we did it each day—a daily letter, according to my recollection, telling him what permissions had been received, and on which tracts it was permissible for him to proceed with this work, and those letters were written to him for his instruction. This is one here which pertains to Tracts, 57, 58 and 59.

Q. That is what?

A. A letter signed by myself addressed to

(Testimony of Captain E. E. Saunders.)

Punnett-Parez & Hutchison, the civil engineers who were making the survey.

Q. Advising them of the permission obtained from Mary Faria, Edward Faria and Mae Roche to enter the tract and make the survey?

A. Yes.

Q. What is the date of that letter, Captain?

A. The 26th of May, 1944.

Q. May 26, 1944.

Mr. Scampini: May I see the letter, Captain, please?

The Witness: Surely.

Recross Examination

By Mr. Scampini:

Q. Will you please indicate to me, Captain, wherein there appears on this letter any reference to a permission having been obtained from Mary Faria, Mae Dutra or [799] Edward Faria in respect to their respective parcels?

A. It is by the parcel number.

Q. Wherein does it indicate that any permission had been received from said parties referring to Parcels 59, 58 and 57?

A. I do not think I understand your question.

Q. Will you please examine the letter and state or point out to me where on the letter there appears any reference as to permission having been received from Mary Faria, Edward Faria or Mae Dutra, in respect to their respective parcels?

A. This letter states that the names and addresses furnished by Mr. Punnett and Mr. Mutchi-

(Testimony of Captain E. E. Saunders.)

son obtained from the county records, and which were used to send out the letters—may I read the paragraph?

Q. Yes, please read the paragraph that you say constitutes a statement of the fact that you received permission?

A. "The Officer in Charge of Construction has requested of the owners of property in the proposed inland site, using a list of names and addresses furnished by your office, and to date has received replies which have granted permission to enter parcels——" a long number—and then ending up with 57, 58 and 59, which were the highest-numbered parcels.

Q. That is the statement upon which you base your conclusion or opinion to the effect that you did receive consent from those parties, is that right?

A. That is right. [800]

Q. As far as you know, the only permission you received, a returned copy of the letter signed by the parties, no longer exists, is that right?

A. That is right.

Mr. Scampini: No further questions.

Mr. Bourquin: That is all, Captain. Thank you.

The Captain is out here from the east. May he be excused, your Honor?

Mr. Scampini: Yes.

The Court: You may be excused.

Mr. Bourquin: We would like to call Mr. Joseph Faria as a witness under Section 2055.

JOSEPH FARIA, JR.,

recalled as a witness by the plaintiff; and having been previously duly sworn, testified as follows:

The Clerk: You have already been sworn, Mr. Faria. Will you please state your name for the record?

The Witness: Joseph Faria.

Direct Examination

By Mr. Bourquin:

Q. Mr. Faria, you testified that you were not present at the well when the oil was spotted that was put down the well on November 27, is that right?

A. I testified that I was there when they spotted oil there.

Q. You testified that you were there?

A. Yes, the one day that they spotted oil. As to the date, I don't remember [801] which one it was, but I know I was there.

Q. On both occasions?

A. No, I remember one. I don't know about the other, but I do remember one occasion.

Q. How many barrels of oil do you recall they spotted on the occasion that you were there?

A. That was eight barrels of oil.

Q. Mr. Faria, I show you here a photostat of a document bearing the heading of the Haliburton Oil Well Cementing Company and ask you if that is your signature at the bottom of that?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. You signed it. Is it a report of the spotting by the Haliburton Oil Well Cementing Company of a certain quantity of oil in that well on November 27, 1944? Is that correct?

A. It says, "Spotting oil."

Q. November 27, 1944? A. Yes.

Q. How many barrels does it show?

A. It looks like 18 there.

Q. It looks very much like it?

A. It does look like an 18. I don't know whether it is or not. It looks like it.

Q. A one and an eight?

A. It does look like it.

Q. It is signed by you under the clause, "The above job was done under the supervision of the owner, operator or agent, whose signature appears below," and the signature is Joseph Faria, Jr., Agent of the Contractor or Operator, District—I guess that is Bakersfield City—is that what that is?

A. I imagine that is what it is.

Mr. Bourquin: We will offer it as an exhibit in evidence and ask that it be marked as a Government's exhibit.

Mr. Scampini: No objection.

(The document in question was thereupon received in evidence and marked U. S. Exhibit U.)

[Plaintiff's Exhibit U appears on page 1283.]

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Bourquin): Mr. Faria, did you cause a notice of intention to deepen the Cal Bay Corporation well on the property to be filed with the Division of Oil and Gas in 1944? A. Yes.

Q. I will show you here, Mr. Faria, the copy of the Notice of Intention to Deepen, purporting to be filed with the Division of Oil and Gas, signed by Cal Bay Corporation, by Byron Norris, Engineer, and ask you if you can identify that as the notice that was filed?

A. Yes, that refers to the well.

Q. That is the Notice of Intention that was filed, notifying the Division of Oil and Gas of the intention to deepen the Faria well in 1944, is it?

A. Yes, I believe it is.

Mr. Bourquin: We will offer it in evidence, if your Honor please, as the Government's exhibit next in order, and if I may, I would like to read the substance of it—not all of the form, but the matter contained. It is addressed to the Division of Oil and Gas, on the letterhead of "Concord, California, July 20, 1944," and it states that, "In compliance [803] with the laws," specifying the law of California, "notice is given of our intention to commence the work of deepening the well No. Faria No. 1," in the section, township, range and description in Contra Costa County.

It recites, "The present condition of the well is as follows: Total depth, 4,398 feet. Casing 121 1/2

(Testimony of Joseph Faria, Jr.)

inch cement 618 feet. 7 inch 23# cement 4,343 feet with 150 sacks of cement.

“A record of performance shot at levels 3,768-3,768, 4,250-4,269, 4,481-4,289, 4,270-4,279. Ran 2½ inch tubing of the packer above 4,260 feet slobbering hole dry. No water and a little gas.”

And the proposed work is as follows:

“Clean out hole, drill and core ahead to try to locate a gas band. Your division will be notified in the event a commercial gas band is uncovered.

“Signed: Cay Bay Corporation,

“By Byron C. Norris, Engineer.”

(The document in question was thereupon received in evidence and marked U. S. Exhibit V.)

[Plaintiff's Exhibit V appears on page 1284.]

Q. (By Mr. Bourquin): Mr. Faria, in connection with a subject that we asked you about at the outset of this trial, I have examined the audit which Mr. Scampini was good enough to allow us to examine, my associate has, and we have ascertained from the audit that the total commissions paid out on the sale of [804] stock were \$47,573.60. Can we agree upon that, Counsel?

Mr. Scampini: Correct.

Mr. Bourquin: And of that sum of money there

(Testimony of Joseph Faria, Jr.)

was paid out to Joseph Faria for commissions the sum of \$42,484.60. Can we agree upon that, Counsel?

Mr. Scampini: We will stipulate to that, Counsel.

Mr. Bourquin: You stipulate to that. Just one other matter, then. The audit likewise shows that there was charged by and paid to Joseph Faria, as we have agreed before, I believe, in 1943, the sum of eight thousand and some odd dollars rental on equipment. That would be agreed, Counsel?

Mr. Scampini: Yes, so stipulated.

Q. (By Mr. Bourquin): You testified, Mr. Faria, that the corporation was indebted to you in a further sum of \$32,445 for moneys advanced, is that correct?

A. No, it is more than that. I did not hand in all of my receipts. It is considerably more than that.

Q. You left me under the impression that you advanced money to this corporation——

A. I did.

Q. ——like an officer. That was not the fact, was it? The actual fact was that the \$32,000 that you referred to represents the charges set up on the books of the corporation made by you for the rent of the equipment in the year 1944, does it not?

A. 1944 and 1943. [805]

Q. In other words, the total rental charged by you approximated \$40,000 and they paid you \$8,000 on it, is that true?

A. That is about it, I think.

(Testimony of Joseph Faria, Jr.)

Q. And the \$32,000, which you say you advanced the company, represents what you say you advanced in the shape of the use of equipment which has not yet been paid for, is that true?

A. Some of it.

Q. In that connection you still have a claim of \$32,000 against any assets of this company for rental of equipment, is that true?

Mr. Scampini: If it please the Court, the testimony is to the effect that the amount owing to Mr. Faria is not \$32,000 and some odd, as Counsel has indicated, but \$34,784.14. That was his answer.

The Court: What Counsel is trying to get at is whether or not the witness still has a claim against the corporation for \$34,000.

Mr. Scampini: We will stipulate to that.

Mr. Bourquin: That is it, your Honor.

The Court: Is that correct?

The Witness: Yes.

Mr. Bourquin: I would like to read from this audit what these items are made up of. There aren't so many.

Mr. Scampini: We object to it as incompetent, irrelevant and immaterial, unless we are allowed thereafter to go into [806] the reasonable cost of such items on rebuttal. We will stipulate to the aggregate amount, but if he is going to read the items, I will have to ask permission to show that it is the reasonable cost in that industry.

Mr. Bourquin: I am not putting them in for the purpose of testing the amounts, your Honor; I

(Testimony of Joseph Faria, Jr.)

want them in, first, so that it is clearly understood this gentleman has a claim against the company and, secondly, it is not for moneys advanced by him to be employed, but represents unpaid rentals on the Joseph Faria equipment that he put on the property and which was utilized in the drilling of the well.

The Court: But he has already agreed that that is the fact.

Mr. Scampini: We stipulate to all of that.

The Court: That is correct, isn't it?

The Witness: That is——

Mr. Bourquin: That is all of the witness.

Mr. Scampini: May I see that exhibit which was just offered?

Cross-Examination

By Mr. Scampini:

Q. Mr. Faria, referring to Plaintiff's Exhibit U, which is the Haliburton Oil Well Cementing Company photostat, will you take a look at the "1" appearing in front of "8", and state whether or not it appears to be scratched out? [807]

Mr. Bourquin: Just a minute, your Honor. I think the exhibit itself is the best evidence. The Jury might examine it.

The Court: Yes, I think that objection is good. That is a matter for visual observation by anyone.

Mr. Scampini: Very well, your Honor. I will ask permission to show the exhibit to the Jury, your Honor.

The Court: All right.

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Scampini): Mr. Faria, do you know of your own knowledge how many barrels of oil were spotted in the well on the date to which this photostat refers?

A. Eight barrels, I was told.

Q. Do you know of your own personal knowledge?

A. No, I do not of my own knowledge. That is what I was told.

Q. With reference to the exhibit which has just been offered with regard to the notice to the Division of Oil and Gas, which is now U. S. Exhibit V, I note here a statement to the effect that, "Your Division will be notified in the event a commercial gas sand is uncovered." Did you thereafter notify the Division of the discovery of a commercial gas sand?

Mr. Bourquin: I object to that as calling for a self-serving declaration, your Honor.

Mr. Scampini: Counsel has brought it in on his own examination. I am entitled to show what was furnished to the Division pursuant to the [807] notice.

The Court: It is a self-serving declaration. Your opponent can offer that kind of document, but I do not think you can. It would be self-serving. I think the objection is good, Counsel.

Mr. Scampini: May the record show, your Honor, that I desire to offer——

The Court: You can offer whatever document you want, for identification.

(Testimony of Joseph Faria, Jr.)

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: I will ask, then, that the report of the Faria Well No. 1, under the heading, "Division of Oil and Gas," the quintuplicate copy, be marked as our Exhibit next in order for the purpose of identification.

(The document in question was thereupon marked Defendants' Exhibit No. 35 for Identification.)

Mr. Scampini: No further questions.

The Court: Anything else of this witness?

Mr. Bourquin: No, your Honor.

The Court: That is all.

As soon as the Jury gets through looking at this exhibit we will take the recess, unless you have a witness who will be short.

Mr. Bourquin: No, the next witness will not be that short, your Honor.

The Court: We will take the afternoon recess. Please bear in mind the admonition of the Court, ladies and gentlemen of the Jury.

(Recess.) [809]

NICHOLAS TALIAFERRO

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name to the court and Jury?

A. Nicholas Taliaferro.

Direct Examination

By Mr. Bourquin:

Q. Doctor, what is your business or profession?

A. I am a geologist, primarily, but I am also professor of geology at the University of California, at Berkeley.

Q. How long have you followed geology, Doctor?

A. About 32 years or more, not counting my education in it.

Q. 32 years or more, not counting your education in it?

A. My beginning education as a professor.

Q. You say that you are presently professor of geology at the University of California, at Berkeley?

A. Yes.

Q. How long have you been with the University?

A. The last time 21 years.

Q. The last time? A. Yes.

Q. In what capacity have you served the University there?

A. As professor of geology and for nine years as chairman of the Department of Geology.

Q. You were chairman of the Department of Geology at the University? A. Yes.

Q. What years, doctor?

A. 1935 to 1945—1936, rather, to 1945.

(Testimony of Nicholas Taliaferro.)

Q. 1936 to 1945. Since that time your activity has been over [810] there as professor?

A. Yes.

Q. Just outline to us, Doctor, what your education and experience in geology have been.

A. Well, I received my bachelor's degree in geology in mining in 1913, and my doctor's degree in geology in 1920.

Q. Where?

A. At the University of California. In 1914, '15 and '16 I was geologist for the Standard Oil of New York in China and the Philippines. Following that time I was a graduate student at the university, and during the First World War I conducted an examination of all of the chrome and manganese mines in the Sierra Nevada and many of those in the Coast Range, for the Government.

In 1918 and 1919 I started to do consulting work in oil and continued that together with my other duties to the present time. After receiving my doctor's degree, I was in consulting work for many companies, working in California and Alaska, Montana, Wyoming, Mexico and other parts of the United States, principally in California.

For two years I was chief geologist to the chief of the Land Department of the Ventura Oil Company, 1923 to 1925. That was taken over by the Texas Company. I returned to the university. I have been there ever since.

(Testimony of Nicholas Taliaferro.)

I have done, while at the university, consulting work for a good many of the companies, Standard of California, the C.C.M.O., which is the Santa Fe, also innumerable companies. [811]

Q. Doctor, in your experience have you made personally field investigations and studies of the geologic formations of California?

A. My specialty is the geology of California. I am writing a book on the geology of California, and I have mapped personally in detail 3300 square miles of the Coast Range, and 500 square miles of the Sierra Nevadas. I mapped that personally in 22 years.

Q. Doctor, in that map work that you have done, have you made any maps, have you made your maps and your records from early published maps, or have you made them altogether from your own examination and field investigations?

A. From my own examinations.

Q. Doctor, in this matter before the court, did you make an investigation and analysis of the geology with respect to the possibility of oil and gas in the vicinity, including the area of the Cal Bay well?

A. Yes, sir. I was requested by the Navy to make such an examination in about May of 1945, and I made such an examination, spending some-time in the field and rendering them a report of July, 1945.

Q. And in that examination did you map the area?

A. Yes, I mapped the area.

(Testimony of Nicholas Taliaferro.)

Q. In that connection did you map that area from published studies that were then on the market or in the books, or did you do your mapping substantially from your investigations and experience in the field?

A. Altogether of my own knowledge of [812] what was there in the field. I might say among the courses I give at the university is a course in the geology of California. I would say I create the literature; I don't need to turn to it.

Q. In this case, did you make a map of the, let us say, the formations or structures from a geologic standpoint in the area of Cal Bay well?

A. I did.

Q. Have you that map with you? Doctor?

A. I have. This map was made on airplane picture furnished by the Navy on a scale of 1 to 20,000, or approximately 1667 feet to the map. That is the practice used in mapping nowadays.

Q. That was the basis——

A. That was the basis.

Q. You used in presenting your data?

Mr. Scampini: May I take a look at it, your Honor? Go ahead, Counsel.

Q. (By Mr. Bourquin): Does this map present your observations and the results of your investigations of the geology of this well area?

A.. Yes.

Mr. Bourquin: We will offer it as our exhibit in evidence, your Honor.

(The map was marked Plaintiff's Exhibit W in evidence.)

(Testimony of Nicholas Taliaferro.)

Mr. Bourquin: I would like to put it on a new board, if we can, because I might want to refer the doctor to one or more of the maps that have been put in evidence.

(The map was placed on the blackboard.) [813]

Q. (By Mr. Bourquin): Doctor, would it be the better way to present the data for you to step to the map?

A. Well, I think I can do that rather rapidly. This is the usual geologic map made in the general fashion, and it shows the distribution of the various ages and units that occur in the region. The upper unit is the upper miocene, which consists of sandstone and volcanic ash, in this general line (indicating). The next unit is the Markley formation or upper eocene age lying in below the miocene. Then you have the Domingine sand, which is predominantly white sand. Below that is the Martinez and Meganos, and below that the cretaceous.

I might say this area down here, here and over this way, this map has a direct bearing on this area. There is a major thrust fault runs along the front of the hills (indicating). They dip to the northeast. As stated, in this region the eocene over the miocene. That breaks up here and enters into the eocene and continues on and finally dies out (indicating). That is as all faults do. The whole region is full of many cross faults in this block. Moving from the east, there is probably a considerable amount of disturbance in the over-riding blocks and it breaks and is

(Testimony of Nicholas Taliaferro.)

faulted. It was the normal course of events. You will see it breaks, and many faults (indicating).

Q. What are the fault lines shown as on the map? A. They are shown in red. [814]

Q. Point to one so we will see.

A. There are a series of faults. Here you will see them. Here they are cut in various directions. These that I have shown you have definite evidence of. The general dip—this, of course, lies on the north flank, the northeast flank of the great Mt. Diablo, which lies down in this region. The essential dips there from this point are the other day, from the mountains, toward the valley. There was renewed growth of the mountain (indicating). The mass of the mountain is here.

Q. Now, Doctor, while you are there, did you find any evidence of an anticline on the Faria Cal Bay property favorable to the accumulation of a commercial deposit of oil or gas?

A. I did not.

Q. In that connection, were you here when Mr. Norris, the petroleum engineer, testified?

A. Yes.

Q. And Mr. de l' Eau when he testified?

A. Yes.

Q. Now, one of the gentlemen, I believe it was Mr. Norris, produced one of the earlier maps.

A. Yes.

Q. He identified matter from his map as a dip or dips in the southwest quarter of the southeast section of Township 21. I would like to point that out.

(Testimony of Nicholas Taliaferro.)

This is the Contra Costa County map, and this is where he identified the dip. Have you examined this map of the defendants heretofore, Doctor?

A. Briefly.

Q. This is a State map. In your examination there on the [815] property did you see any evidence of a dip to the southwest, as the witness Norris says and marks on the southwest quarter of the southeast section of township 21.

A. No. I found all the dips in that region to be to the northeast. There is a dip down in the next section, here, that generally dips to the southwest, but that lies in the fault zone. The rest of the dips are all toward the northeast.

Q. Well, you say you find one dip common to the southwest beyond the fault zone. A. Yes.

Q. Beyond this—— A. In the fault zone.

Q. In the fault zone. The major dips run northwest to southeast, is that true? A. Yes.

Q. Doctor, did you find in your examination an anticline such as, the evidence of an anticline on Cal Bay Faria property such as is shown on the official map of Contra Costa County by the witness Mr. Norris? A. No.

Q. Did you find evidence of such an anticline as was shown by the map of Mr. de l' Eau on this property?

A. That I would have to examine as I looked at that map—I might say there is a very weak anticline to the northeast of the well, but so weak you can hardly see it. It is merely a flattening of the beds.

(Testimony of Nicholas Taliaferro.)

Q. Can you point out the approximate line on your map? A. Right here.

Q. In relation to that what is the approximate length of that [816] anticline?

A. About 2500 feet; I would say approximately a little less than half a mile to the northeast. That is so weak that it is really—it drops back from the well and flattens and then goes down in the general dip off toward the Valley Range.

Q. Is the structure of Cal Bay Property, or the Faria property, a gently folded structure, or is it a faulted structure?

A. It is strongly faulted. The bed dips from the fault very steeply at first, then gradually gently out to the usual dip out toward the valley, toward the northeast, but it is in the immediate vicinity of the fault that the dip is rather high.

Q. Would you consider the Cal Bay Corporation a favorable structure in which to explore for a commercial accumulation of oil or gas?

A. Emphatically not. Had I been sent out to report on such an area, either a new area or a submission, I would never have recommended the drilling of a well in that location. In fact, I would have turned down the thing and so reported.

Q. You heard the witnesses, the various witnesses on geology and engineering testify here for the defendants? A. Yes.

Q. Since the outset of the trial?

A. Since the beginning.

(Testimony of Nicholas Taliaferro.)

Q. Have you seen the log of this well?

A. Yes.

Q. And the studies that were made of it in 1943 in the Schlumberger test and the other tests, the results there shown.

A. Yes.

Q. Do you find in any of it any reason to believe that on the [817] Cal Bay or Faria property that they could find any commercial deposit of oil or gas?

A. I do not.

Q. Now, Doctor, you have heard here the references to seeps and oil showings in the water holes on the property, and so forth; are you familiar with that?

A. I saw no oil seep on the property. There is a gas seepage and I think they tried to take a picture, but I don't believe they had any success. However, I think there was a gas seep there.

Q. What is the significance of the gas seep there in the property? Have you got your investigation report?

A. I have made seepage examinations in northern California, the first time was in 1919, when I was with the Union Oil Company of Delaware, now the Shell Company. I made a report on oil possibilities, not on gas, on oil possibilities north of San Francisco Bay, and at that time I examined all of the known seepages and all of the wells that had been drilled in the northern California region, and I found many gas seepages. I have since then examined them in detail, two quadrangles, two areas, 250-mile areas, up in that region, and have

(Testimony of Nicholas Taliaferro.)

had occasion to see a great many seeps of oil and gas. In fact, I made a report for one of the northern California oil companies on the whole region, and found many seeps, gas seeps escaping in that region. In fact once they pulled up a fence post and lit the hole.

Q. Lit the hole from an old fence post?

A. From an old fence [818] post. Gas in the cretaceous of northern California is exceedingly common. There are innumerable gas and oil seepages. I remember making the rash statement in 1919, being young and rash, that I would drink all the commercial oil produced up there, and if we say "commercial" I think I would still repeat that. The wells do not yield in barrels per day, but in gallons per month, which you could hardly consider commercial.

Mr. Bourquin: You may cross-examine.

Cross-Examination

By Mr. Scampini:

Q. Professor, how many days did you spend on the subject property making your personal investigation?

A. I spent on this particular examination fifteen days. However, I have mapped, if I may explain to you, all of this region previously. I had mapped this area down in here previously. As I had not been across that area (indicating), I spent fifteen days in the central part of that area.

Q. When you say that you mapped it previously, I will ask you whether or not you did not write

(Testimony of Nicholas Taliaferro.)

an article in 1940 for Bulletin 118 of the Division of Oil and Gas, entitled, "Central Coast Range"?

A. Yes, I did.

Q. I will ask if in respect to that article did you use a map entitled, "Geologic Structure and Cross Section Central Coast Range of California," which I show you.

A. I did.

Q. At the top of the map you will please state what cross [819] section appears at the very beginning of that map?

A. 10. This is No. 10. It is the map that extends from the Pacific Ocean underneath San Francisco Bay, which I left blank, across to the San Joaquin River, through the location of Mt. Diablo. Do you wish me—

Q. I shall ask the questions, Professor, if I may.

A. I say, "Modified after J. A. Taft" on that end of the area.

Q. Well, I was coming to that. On the cross section of this Mt. Diablo region where did you get your information in the map that appears in that bulletin?

A. As I stated on the map, I took it from Taft. That was written in 1939.

Q. You had reason to believe at that time that the cross sections of that map by Professor Taft are correct, did you not?

A. No, no. I modified it some.

Q. In your modification will you now please state wherein it differed from the cross section of the geological formations found on Mr. de l'Eau's map,

(Testimony of Nicholas Taliaferro.)

which is Defendants' Exhibit 32 in evidence, and entitled "Cross Section E-F."

A. My section runs across Mt. Diablo farther south of the area shown.

Q. Will you now please state whether or not the geological formation shown as existing in Cross section E-F prepared by Mr. de l'Eau on Defendants' exhibit 32 is substantially correct as you found it on your investigation on the subject property?

A. No. [820]

Q. What is wrong with the cross section on his map of the area? Do you note that end——

A. This—I don't know where it was taken. You said "through the subject property."

Q. Well, that is a cross section.

A. E-F?

Q. E-F shows——

A. It is a very generalized cross section and was taken bodily on that point from the article of J. A. Taft. [820-a]

Q. Do you note any errors on that cross-section?

A. Yes, I do, if it is through the property.

Q. Well, it is apparently through the property indicated by the line E-F on the map.

A. Yes.

Q. Please now refer to the section of the property traversed by the cross-section and state whether or not you find any errors on there?

A. Yes, I do.

Q. What errors do you find?

A. I find the thrust fault that is shown here is not shown there.

(Testimony of Nicholas Taliaferro.)

Q. Where is any thrust fault shown on the cross-section E-F? A. There isn't any.

Q. Please state where the thrust fault that you say exists on your map would appear on the cross-section E-F?

A. The details of the cross-section out here are not there. It would appear somewhere in here (indicating). This section does not go through the defendants' property obviously, because there is no Martinez exposed. I do not know what this is—I suppose that is Tejon. There is no Tejon exposed there.

Q. Professor, let us take a look at the longitudinal section G-H, along the axis of the anticline which Mr. de l' Eau states exists on the subject property, as shown by my marker, and I will ask you to state whether or not the formations shown on that cross-section appeared on the subject property and were traversed in the course of drilling the Cal Bay well? [821]

A. Well, I would say essentially they were, yes. We do not call that Tejon, but still I would say, however, the cross-section at this end is entirely erroneous.

Q. What is erroneous at this end of the cross-section, pointing at the easterly end?

A. That section, I take it, is right through here, is it not?

Q. That is correct.

A. That brings out beds down as low as the Martinez, we will say. It had been very low.

(Testimony of Nicholas Taliaferro.)

Q. Let us take a look and limit our investigation to the cross-section between the faults which are on both sides of the Cal-Bay Faria well. Please state whether or not those formations are substantially correct and found by you to exist on that cross-section.

A. Well, I do not know as they are as to depth. I do not see a scale here. I could not say they were substantially correct. The same formations are found, yes. I think there has been no question as to that.

Q. Did you locate on the subject property the following formations, to-wit, any pliocene?

A. Are you speaking now of the area of the property?

Q. Where the Cal-Bay Corporation well exists, at the surface of the structure?

A. At the Cal-Bay well there is certainly no pliocene, no.

Q. Did you find any miocene?

A. Not at the Cal-Bay well, no.

Q. Did you find any miocene to the north of the Cal-Bay well? [822]

A. Yes, I pointed that out on the map.

Q. Did you find any oligocene?

A. Oh, no, there isn't any oligocene in there.

Q. Did you find any markley formation?

A. Yes.

Q. Underneath the marino did you find any of the Tejon group?

(Testimony of Nicholas Taliaferro.)

A. It depends on what is meant by the Tejon.

Q. Did you find a Martinez?

A. Not on the surface, no.

Q. Did you find it in the course of drilling the Faria well?

A. Yes, it was in the well.

Q. At approximately what depth did the Martinez show up?

A. I would have to refer to some notes I think I have. The top of the Meganos was at about 4,184.

Q. Is the Meganos above or below the Martinez?

A. Well, it is above it.

Q. Where would you locate the Martinez formation on the Cal-Bay property, assuming that you located the Meganos at about 4,184?

A. If it is there, about fifty feet below.

Q. And how thick is the Meganos formation in that region?

A. The Meganos formation in this region is exceedingly thin.

Q. How thick is the Martinez formation in that region?

A. If it is there at all, it is very thin.

Q. What makes you state that it is very thin?

A. From my map—this will be rather technical, but you brought it up—from my map in this region, down in here, I found a factor that is well known to all the oil geologists who have worked [823] in this region—and I have done my share in working it out—that between what is known as the Domengine sand and the Meganos formation there was a break; that the Martinez and the Meganos

(Testimony of Nicholas Taliaferro.)

were slightly tilted before the Domengine was laid down. The Domengine was sand, clay and carbonaceous shale, and when the Domengine sea again came in these were beveled off and they thinned progressively toward the north. In the Standard Kellar they were 577 feet thick. In the Cal-Bay well they were about 153 feet thick, in that neighborhood; then progressive thinning of everything between the base of the Domengine and the top of the cretaceous occurs in the line of this direction (indication on map). There is a progressive overlap of the Domengine onto the cretaceous, cutting out the Meganos and the Martinez for a distance in the flank of the Diablo uplift. Down here—I forget the figures on the thickness—but the Meganos and the Martinez go up to twelve or fifteen hundred feet.

Q. Are you finished? A. Yes, sir.

Q. Would you say the Domengine formation was penetrated by the Faria well in the course of drilling? A. Unquestionably.

Q. Would you say that the Martinez formation was penetrated by the Faria well in the course of drilling? If the Martinez is still there I certainly think it was penetrated, yes.

Q. Is the Domengine formation productive of oil and natural [824] gas in commercial quantities in any of the surrounding gas fields?

A. The Domengine?

Q. Yes. A. Oh, yes.

Q. Where?

A. The eocene sand, either Capay or Domen-

(Testimony of Nicholas Taliaferro.)

gine produced—well, at Honker Bay this sand that comes in just below—these are, I think, quibbles in geology—they come in below what is called the true Domengine, the Capay sand, and then in the other fields of the eocene, of this region, you produce from either the Domengine sand or from a sand in what is known as the Capay right below it.

Q. Is the Domengine sand productive in commercial quantities of natural gas in the Rio Vista field? A. As I remember it, yes.

Q. Is it productive in commercial quantities in the Honker Bay well?

A. No, I do not think it is. I think the production there, from all that I have heard, came from a sand just below what they call the Domengine.

Q. Is it the Martinez?

A. No, it is the Capay.

Q. It is an in-between sand, is that correct?

A. It is an in-between sand, yes.

Q. Between the Martinez and the Domengine?

A. Yes.

Q. Is the McDonald Island gas field from the Martinez sand?

A. Supposedly from the McDonald Island sand, which is supposed to be Martinez.

Q. How thick are the Martinez sands in the McDonald Island [825] field?

A. I do not carry those figures in my head. I have too much else. I do not bother with them.

Q. Would you say they were fifteen hundred feet thick?

A. I wouldn't say a word about them.

(Testimony of Nicholas Taliaferro.)

Q. What underlies, generally speaking, the Martinez? A. The cretaceous.

Q. Is the Marino a portion of the Cretaceous?

A. Yes, it is the upper portion.

Q. Is the Marino a shale or a sand?

A. A shale with sand in it.

Q. Is a shale generally considered to be a source rock for oil or natural gas if it is a marine shale?

A. No, not always.

Q. Is it sometimes? A. Oh, yes.

Q. Is the Marino formation productive of natural gas in commercial quantities in any other gas fields surrounding this territory?

A. Surrounding this territory?

Q. Yes. Say Tracy?

A. No, no, that is not surrounding this territory.

Q. How far is Tracy from the Cal-Bay property?

A. It is 60 miles from my house, and I live about ten miles from the well; I guess about seventy miles.

Q. And how many gas fields in California produce from the upper Cretaceous formation, to your knowledge?

A. You are say now not Marino, but upper Cretaceous? [826]

Q. Upper Cretaceous?

A. The buttes, the Marysville buttes, are producing a small amount of gas from the upper Cretaceous. Tracy is still producing a small amount of gas from the upper Cretaceous. Vernalis is said,

(Testimony of Nicholas Taliaferro.)

doubtfully said, to produce from the upper Cretaceous, but I am not so certain about that. There are small fields scattered around northern California, none of them produce very much.

Q. Will you say the upper Cretaceous underlies the Martinez on the Cal-Bay property where the Faria well was drilled?

A. Most certainly. I would say it was penetrated.

Q. What basis have you for your statement that it was penetrated?

A. The presence of the foraminifera of the known Cretaceous age, the *globo truncana*.

Q. Did you examine any of the cores of the Faria well? A. I am not a micro-paleontologist.

Q. Where did you get the information that there were present fossils in cores of the formations taken from the Cal-Bay that indicated it to be of Cretaceous formation?

A. I got it from the log furnished me by the Navy, who obtained it from the Standard Oil Company and from other sources.

Q. Now, when you are talking about the log, which log are you referring to? The log of the Standard Oil Company Kellar No. 1?

A. No, I am referring to the Cal-Bay log.

Q. Do you mean to state from your examination of the log of the Cal-Bay you determined that the well had penetrated the [827] Cretaceous?

A. Yes, I would say without much doubt that it had penetrated the Cretaceous because—I expected

(Testimony of Nicholas Taliaferro.)

the Martinez and the Meganos to be very thin in that area, and the Domengine shows up in all well logs. You can see in the Schlumberger log it shows up. You know where it is. And using that interval I would have expected the well to go into Cretaceous at a relatively shallow depth.

Q. At what depth do you think the Cal-Bay well penetrated the Cretaceous?

A. I could not say to the foot, because they did not core in that well continuously as one normally does in a wildecat well, but from the best information that I can get I would say that they penetrated the top of the Cretaceous at about forty-three—somewhere between forty-three thirty-seven and forty-three seventy-two, somewhere in that region.

Q. Would that be the formation where the first showing of gas was obtained in October, 1943, according to your view?

A. What depth is that showing obtained?

Q. You say you examined the log of the well. Don't you know?

A. I do not carry those figures in my head.

Q. Have you any record or any information upon which you predicated your statement that the Cretaceous was penetrated at 4,300 feet?

A. Yes.

Q. What record have you got?

A. Not that I made personally; that was from information that I believed worthy. I [828] am willing to accept information that I believe worthy.

(Testimony of Nicholas Taliaferro.)

Q. Where did you obtain the information that you believed worthy?

A. From the Standard Oil Company.

Q. What information was supplied to you with respect to the Cal-Bay well by the Standard Oil Company?

A. None directly. They supplied it to the Navy and the Navy gave me copies of what they supplied and said they would give me anything I wished. However, I formed my own judgments, did my own field work, drew my conclusions and gave my report and the incident was closed.

Q. Did you draw your conclusions that the Faria well penetrated the Cretaceous at 4,300 feet because the Kellar well drilled by the Standard Oil Company had penetrated the Cretaceous at about that depth?

A. They did not penetrate it at that depth, I do not think.

Q. Where did the Kellar well penetrate the Cretaceous?

A. The Kellar well penetrated the Cretaceous at 3,760 feet.

Q. Did you draw a conclusion from the fact that the Kellar Well penetrated the Cretaceous at 3,760 feet that the Cal-Bay well penetrated the Cretaceous at 4,300 feet?

A. No, that would be a false assumption.

Q. That is correct. Isn't it a fact that in the Kellar well they penetrated the same formation three times?

A. Yes. I have drawn a cross-section showing that.

(Testimony of Nicholas Taliaferro.)

Q. To what do you attribute the penetration of consecutive [829] formations or, rather, the same formation three consecutive times?

A. This thrust fault dips in beneath the Kellar structure, which I described before I thought, and with movement like this, went along a bedding plane, slipped up and buckled over. If you try to push anything like that (indicating), it will buckle over. It overrode this three times. I have it on my cross-section, penetrating three times.

Q. Is it true, Professor, the reason the same formation was penetrated three times is because of the existence of the fault which is shown on Mr. de l' Eau's map and entitled Bailey Pass Fault referred to as that fault on your map which you have just indicated?

A. Well, I would not say that that was the same fault. It is this fault that I show on my map.

Q. Where does the fault that shows on your map appear on the map of Mr. de l' Eau——

A. I don't know.

Q. ——or is there any difference?

A. I think there is.

Q. Does the fault shown on your map go through the Bailey Pass?

A. Here is the Bailey Road.

Q. Where does the fault go through?

A. It goes through a little bit north, I would say 500 feet northeast of the Montebello-Diablo Rancho line.

(Testimony of Nicholas Taliaferro.)

Q. With relation to the Bailey Pass Road, where does that fault lie? A. I have just said.

Q. Is it in close proximity?

A. I don't know where the [830] Bailey Pass—I will have to look at this.

Q. Didn't you go over the Bailey Pass Road in your field investigation, Professor?

A. Oh, yes.

Q. Didn't you see the dip standing practically upright in the Bailey Pass Road?

A. That is the Willow Pass.

Q. That is the Willow Pass that you are pointing to now, and that is to the southeast plunge of the structure, isn't it? Referring you to the Bailey Pass——

A. Here is the Bailey Pass Road here. Here is where the fault goes right there (indicating).

Q. Then would you say the fault placed on the map by Mr. de l' Eau is approximately correct, at Bailey Pass?

A. Down to that point. From then on we do not agree.

Q. With respect to the Willow Pass Road which is shown on Mr. de l' Eau's map, would you say that it is approximately correctly placed?

A. Approximately. You can't miss it.

Q. With respect to the section lying in between the Willow Pass fault and the Bailey Pass fault, can you state whether or not that is not or is a closed structure by reason of the faults on each plunge?

A. Are you speaking of this as the Bailey Pass fault (indicating).

(Testimony of Nicholas Taliaferro.)

Q. That is what it says there, doesn't it, Bailey Pass fault, Bailey Road fault?

A. We were speaking of entirely different faults—entirely different faults.

Q. To what fault are you referring?

A. There is no such [831] fault across the Bailey Pass Road.

Q. Professor, how do you account in your studies of geology that the Cretaceous was encountered in the Kellar well three times at about thirty-seven hundred feet, whereas in the Cal-Bay well it is only penetrated once in normal sequence, if there is any fault between them?

A. There was what?

Q. I will withdraw the question and approach it from a different angle.

A. I think I can answer the question if you substitute Domengine for Cretaceous.

Q. Perhaps I did not understand your answer. Didn't the Standard Oil well penetrate a formation three consecutive times?

A. It penetrated the Domengine.

Q. It was the Domengine? A. Yes.

Q. Did you find any evidence of any missing formations in the Cal-Bay log that normally follow each other in sequence on the geological table?

A. No, you went into the Nortonville shale, which is clearly shown; you went out of the Nortonville shale into the Domengine; and you went out of the Domengine into a thin section that is probably Meganos or Martinez or both, and you went

(Testimony of Nicholas Taliaferro.)

out of that into the Cretaceous in a normal section.

Q. That would indicate to you there is no faulting?

A. Oh, no, I have shown a fault in my cross-sections through the Cal-Bay well, and I think there is such a fault there.

Q. Please indicate what evidence you found on the property [832] which indicates the existence of a fault through the Cal-Bay well?

A. Here is the Cal-Bay well (indicating). The beds in the vicinity are dipping very steeply back. Here you have within less than a foot—as close as you get to it on the fault right here—the Markley formation of the eocene age is standing at 60 degrees, dipping to the northeast in contact with the pliocene.

Q. Professor, aren't you referring to the same fault that Mr. de l' Eau has marked to the southwest of the very structure as existing there?

A. You referred to this as the Bailey Creek fault and then to this as Bailey Creek fault (indicating).

Q. No, that is the Willow Pass fault that you are now indicating.

A. Yes, the Willow Pass fault.

Q. Is that the fault that you say runs across the Cal-Bay well? A. I say it does, yes.

Q. Isn't it a fact that the Cal-Bay well runs at least six hundred feet to the northwest from the fault line? A. Nine hundred feet.

Q. At least nine hundred feet?

A. I measured it. Nine hundred feet.

(Testimony of Nicholas Taliaferro.)

Q. Isn't it customary in the oil and gas prospecting business to try and locate a well as close as possible to a fault and yet not within the influence of the fault, if you reach the conclusion that the fault may form the closure to the trap? [833]

A. In the first place, you would have to state a lot of reasons why you concluded the fault would form a trap.

Q. Is it possible for a fault to form a trap?

A. It is possible.

Q. Is it possible for the Bailey Pass fault on the one side and the Willow Pass fault on the opposite side to constitute seals, as it were, to a structure lying in between them?

A. I deny the existence of the Bailey Pass fault, so I cannot answer the question.

Q. Do you deny the existence of the Kirker Pass fault which lies to the north of the Bailey Pass fault?

A. Where is the Kirker Pass fault?

Q. Where is the Kirker Pass fault?

A. I can't refer to that map. I have to refer to my own. I did not make that map.

Q. What name have you given to the fault you have located?

A. This is the Willow Pass fault.

Q. That is right, and that shows up over there, too?

A. Yes, but it does not go in the same place. I did not name these, because there are so many of them. I would run out of names. Here is Bailey Pass and here is Kirker Pass.

(Testimony of Nicholas Taliaferro.)

Q. Would you say there is no fault——

A. There is a fault at Kirker Pass, right there (indicating).

Q. And there is a fault, then, between the Kirker Pass and the Cal-Bay property, according to your map?

A. There is a [834] fault right here, yes.

Q. Where is that fault located in relation to the Bailey Pass Road?

A. Here is the Bailey Pass Road, right here (indicating).

Q. How many feet away or how many miles away from the fault indicated by you as lying in the proximity of the Bailey Pass Road?

A. It is not in proximity. It is about half-way between the Bailey Pass Road and the Arnold Industrial Highway, which is the Willow Pass Road.

Q. Half-way. How many miles between the fault that you have just indicated and the Willow Pass Road?

A. About a mile and a half.

Q. Now, referring to Mr. de l' Eau's map, isn't it approximately about a mile and a half between the Willow Pass fault, as shown by him on that map, and the Bailey Pass fault?

A. About two miles.

Q. Please state whether or not in your experience you have not found numerous incidents when faults have acted as seals and formed traps for the accumulation of oil or gas?

A. No, not numerous ones, no.

Q. Some? A. Some.

(Testimony of Nicholas Taliaferro.)

Q. It is not impossible, is it?

A. No, it is not impossible.

Q. Do you concede, Professor, the existence of dips on the Cal-Bay property dipping to the north-west from the summit?

A. I have shown many of them, yes. [835]

Q. Do you concede the existence of dips in a reverse direction from the summit of the Cal-Bay property towards the southeast?

A. You will have to use my map. I refuse to use someone else's map.

Q. Let us take a look at Mr. de l'Eau's map——

A. I did not make it.

Q. I will approach it from a different angle. When you made your field studies, do you mean to state, Professor, you did not take advantage of the reports filed by Mr. Byron Norris, to which there were attached his maps and findings?

A. No, sir.

Q. Didn't the Navy turn them over to you?

A. No, sir.

Q. Did you ask for them? A. I did not.

Q. You did not want the aid and assistance of any findings of Mr. Byron Norris, is that right?

A. I did not.

Q. You just wanted to make your own conclusions? A. Most certainly.

Q. So you did not know at the time that you were going over the property approximately the location that Mr. Norris had placed the axis of an alleged anticline, did you?

A. Oh, yes, I was told that.

(Testimony of Nicholas Taliaferro.)

Q. Who told you that?

A. I can't remember the man. I think it was Lieutenant Woodward, if I recollect correctly, and he said, "Here is a map," and I glanced at it. He said, "Do you want it?" I said, "I don't want it, no." [836]

Q. Did you not think it advisable to pick up the map and go to the very location where he had indicated findings of dips, and ascertain whether or not the dips were there?

A. I covered the ground thoroughly.

Q. Then how can you state if you did not know where the dips found by Mr. Norris existed—how can you state that you did not find any such dips?

A. Because I went over that with a fine-tooth comb. I visited it not once, but many times, and I walked back and forth. There is a very steep hillside there, which I remember rather vividly. I climbed it, and I climbed back down it.

Q. I think I climbed with you one day, Professor.

A. Not that one. That was too steep. I had boots on when I climbed that.

Q. Professor, do you mean to state according to your view of the situation that both Mr. John de l'Eau and Mr. Byron Norris are wrong in their findings of an anticlinal structure? A. I do.

Q. Please tell me where the gas came from that was produced in October, 1943, from whatever formation you say it was?

A. What do you mean by produced?

(Testimony of Nicholas Taliaferro.)

Q. Where did it come from? How did it get there?

A. Produced from? The well was never put on production.

Q. Was there a Johnston formation test made?

A. Yes.

Q. What did the test show?

A. One test, the first test, [838] was 100,000 cubic feet; the second test was 125,000 cubic feet, which is certainly not a commercial quantity at that depth.

Q. Professor, have you ever worked drilling oil wells?

A. I have never worked on a rig. I have spent many a cold night on a derrick floor watching cores come out.

Q. Do you know whether or not a Johnston formation test made on a formation for the purposes of indicating its production is conclusive as to the maximum production of the sand tested?

A. I am not a petroleum engineer and have made no claims of being a petroleum engineer.

Q. Did you have the benefit of a study of a core examined by Paul P. Goudkoff on November 10, 1944, the core having been taken from the 4,823-foot level and the 4,843-foot level of the Cal Bay well when you made your report? A. No.

Q. Do you know Paul P. Goudkoff?

A. Oh, yes, yes, very well.

Q. He is an eminent geologist and paleontologist?

A. He is a micro-paleontologist, yes.

(Testimony of Nicholas Taliaferro.)

Q. You have no reason to dispute his conclusions of findings, have you?

A. Not based upon micro-paleontology, no.

Q. And if Paul P. Goudkoff concludes that a core taken from the 4,823-4,843-foot interval of the Cal Bay Faria well resembled a Meganos formation, would you say that the well had already penetrated the Cretaceous at 4,300 feet? A. Yes, sir.

Q. Is the Cretaceous above the Meganos?

A. No, sir.

Mr. Bourquin: You are not implying, Counsel, that Mr. Goudkoff made any such assertion predicated on a micro-paleontologist's examination? He said lithographically.

The Witness: Lithologically.

Mr. Scampini: Let us take it from the lithological approach. Lithology, I suppose, refers to the rock appearance of the formation, doesn't it?

A. Yes, that is the appearance of the rock.

Q. Do you pretend to be a paleontologist experienced in the study?

A. No, I have gathered a little information on it, but I would not want to say I knew anything about it.

Q. Professor, if Paul P. Goudkoff states that the core found at the interval I just stated, from a lithological appearance, resembled the Meganos, would you say that he was in error?

A. I would say that he was very likely in error, yes, very likely.

(Testimony of Nicholas Taliaferro.)

Q. And the only basis for your conclusion that he might be in error is the fact that you examined the electric log of the Cal Bay well, isn't that right?

A. Oh, no.

Q. You never examined any of the cores yourself?

A. No.

Q. You never discussed with anyone, did you, the question of the cores obtained from the Cal Bay well with anyone who had examined them?

A. Oh, yes.

Q. Who did you talk it over with?

A. I talked it over [839] with the Standard people, who said they had examined them and had collected them and who had washed samples from them, and they found Cretaceous. Now, I did not ask them where. I thought I could measure the section and estimate, roughly, myself, where they had gotten the Cretaceous, which I did.

Q. And you have concluded from your measurement of the section that the Cretaceous in the Faria well was crossed at about forty-three hundred feet?

A. Somewhere between forty-three thirty-seven and forty-three seventy-two, because of the lack of close coring intervals.

Q. Then how did you account for the existence of the Meganos below the Cretaceous in the Faria well?

A. I do not think there is.

Q. You dispute the findings of Paul P. Goudkoff, do you?

A. I certainly do. May I ask, does he state that he found foraminifera—does he give a list of the foraminifera there?

(Testimony of Nicholas Taliaferro.)

Q. I refer you to the findings and the report?

A. May I read this aloud?

Q. Yes.

A. "4823'-4843'—Dark gray, impure sand grading into massive sandy shale. Contains no organic remains except scattered carbonaceous particles.

"Remark: Because of the lack of diagnostic organic remains, the age of the formation represented by samples cannot be [840] determined. Lithologically the samples resemble some of those obtained from the Cerros member (Meganos stage of Clark and Vokes) cored by the Standard Oil Community Suisun well No. 1."

That is a lithologic thing and I do not think he is necessarily a competent judge of lithology.

Q. Did you judge or make any studies of lithology, of the lithology of any of the Cal Bay cores?

A. No.

Q. I will now ask you, Professor, whether or not in your opinion it is possible for a formation to be productive of 125,000 cubic feet of gas on a Johnston formation test without there being a closed structure to trap the gas therein?

A. Most certainly.

Q. And where would the gas be coming from that resulted in a volume of 125,000 cubic feet per day?

Mr. Bourquin: That was the rate. Let us be sure of that.

Q. (By Mr. Scampini): Your opinion.

(Testimony of Nicholas Taliaferro.)

A. I imagine while the well was being repaired some open hole below, it started accumulating slowly in that over a period of time, and does not necessarily by any manner of means represent the rate of the well.

Q. Professor, are you just assuming something now?

A. I am saying that is a decided possibility.

Q. That is only a possibility, though, isn't it?

A. Yes, it is a strong possibility. [841]

Q. It could also be a closed structure, could it not, Professor?

A. Oh, no.

Q. Why couldn't it be a closed structure, in your opinion?

A. Because I have examined the area carefully and there is certainly no closure anywhere.

Q. Let us approach it then from this angle: there is a closure on the west side of the Cal Bay property resulting from the Willow Pass fault, isn't there?

A. No, sir.

Q. You deny that also?

A. Yes, sir.

Q. Does the Willow Pass fault act as a seal on the southeast plunge of this structure?

A. There isn't any southeast plunge.

Q. You mean that there is no structure?

A. No, there isn't any structure. It is open, open to the world, as I have said.

Q. So that Mr. Norris and Mr. de l' Eau are in your opinion both in error as to the existence of any structure here?

A. Yes, sir.

Q. Did you discuss your findings with Mr. Norris at all?

A. No.

(Testimony of Nicholas Taliaferro.)

Q. Did you go down to ask him, or did you ask him to forward to you some of his working notes?

A. No.

Q. Did you discuss it with Mr. de l' Eau?

A. No.

Q. Have you any reason for assuming that Mr. Norris or Mr. de l' Eau, or either of them do not know their business as geologists? A. Oh, no.

Q. Would you concede that Mr. Norris' ability as a geologist is the equal of the average geologist in the business? A. I couldn't say.

The Court: Counsel has not objected to that, but this Jury has enough to do to try to decide this case without deciding the relative merits of the experts.

Mr. Scampini: I suppose so, your Honor. I will withdraw question.

Q. Referring to the gas seepage on the Mary Faria property, Professor, you have heard the testimony that for a period of approximately twenty to twenty-five years that seepage has been in evidence, and for many years it burned day and night, have you not? A. Yes, sir.

Q. In your opinion, where did the gas come from that was feeding that flame throughout all those years?

A. It came from the organic contents of the sediment down below which seeped up through a cracked and faulted stone and escaped at the surface.

(Testimony of Nicholas Taliaferro.)

Q. You do concede, then, the existence of formations down below capable of producing natural gas? A. Oh, yes, certainly.

Q. You only deny the existence of a closed structure or trap on the subject properties, is that right?

A. Yes. The most favorable horizons, however, since you brought that up, have been tested and found wanting. [843]

Q. Found wanting in your opinion as to commercial quantities, is that right? A. Yes sir.

Q. Have you any knowledge as to what formation was penetrated in November of 1944 on the occasion of the blowout? Have you any personal knowledge as to the capacity of production from that formation?

A. I do not think anybody has.

Q. So how can you state whether or not they have been found wanting?

A. They were down in the Cretaceous at that time, and the Cretaceous is certainly not a very happy place to be in the well in general. There have been some commercial fields, but they have been few and far between.

Q. Professor, will you concede that in the Santa Maria field they are now producing some very large volumes of crude oil and petroleum from the Cretaceous? A. No.

Q. You deny that? A. I certainly do.

Q. Is it not true that in recent years it has become acknowledged that the production of crude

(Testimony of Nicholas Taliaferro.)
petroleum in the Santa Maria field is coming from the Knoxville formation?

A. The Knoxville is not Cretaceous. The Knoxville is upper Jurassic.

Q. It is the contact between the Jurassic and Cretaceous, isn't it?

A. No, it is the upper Jurassic.

Q. Do you deny, or have you any knowledge that it is coming from that formation?

A. Yes, it is coming from that, but it leaks down from the overlying miocene. [844]

Q. It leaks downward? A. Yes.

Q. Tell me whether gas can leak downward as petroleum can? A. Not very well.

Q. Could the gas that was discovered in 1943 at the 4,300-foot level *possibly the* same gas that was discovered in the Faria well in November 1944, at 4,800 feet? A. No, no.

Q. So it must have been an entirely new sand, is that right?

A. If there was a gas sand there, it would be a new sand, yes.

Q. You have no personal knowledge as to whether or not any gas came from the new sand penetrated in November? A. No.

Q. With respect to the productive capacity of the Cretaceous, do you know the volume of production per cubic feet per day of some of the wells drilled on the Tracy field?

A. Oh, I have had those figures. I don't remember the exact figures. They were well up in the several millions of cubic feet.

(Testimony of Nicholas Taliaferro.)

Q. How about the Vernalis field?

A. That is rather new. I am not familiar—I know—I don't know whether they have rated them yet or not.

Q. Did you examine the log of the well drilled by the Standard Oil Company at Honker Bay?

A. Yes, sir.

Q. At what depth did they encounter the Martinez formation in that well?

A. They reported they encountered the top of the Martinez below the Ione clays at 7,162. [845]

Q. How many miles to the northwest of the Cal Bay property is the Honker Bay well of the Standard Oil? A. Six miles.

Q. Did you find any interruption in the normal sequence of the geological formations between the Cal Bay property and the Honker Bay property other than normal dipping?

A. Honker Bay would be on up in here, yes. The pliocene comes in on this side of the fault and comes around like this, and comes in here. This is all pliocene, indicating that that is going down, very rapidly.

Q. Do you know the production of gas from the Honker Bay well obtained from the Martinez formation at 7,200 feet? A. No.

Q. Would you say it runs into several million cubic feet per day?

A. Yes, somewhere in that neighborhood. I have heard.

(Testimony of Nicholas Taliaferro.)

Q. Did you not think, when you were given the information, the Martinez was found at an extremely low depth in the Honker Bay well?

A. Oh, no.

Q. Is that where you expected to find it?

A. No, I didn't expect to find it. That is all buried in what is known as a geophysical plane. It is not a surface plane.

Q. How do you account for the fact that the Martinez was found at Honker Bay at 7,200 feet, approximately six miles from the Cal Bay property, whereas in the Cal Bay property you say it appears at around 4,300 feet?

A. That would only be a drop of 3,000 feet in six miles. That is a very gentle angle. [846]

Q. It is a gentle dip, is it not?

A. I mean, if it continued like that.

Q. Have you any information that would indicate that it does not continue that way to Honker Bay?

A. I haven't personally, no.

Mr. Scampini: Does the Court wish to continue?

The Court: I do not wish to impose on the Jury, but this case is taking an inordinately long time and some of the jurors mentioned that they have other engagements, and we have got to carry on and finish this case. I have other litigants who are waiting. I think we will have to run longer hours and get through it as soon as we can.

Mr. Scampini: I do not think I will have many more questions, but I would like to ask permission to ask for a recess at this time, and I do not think

my examination will last more than ten or fifteen minutes more in the morning.

Q. (By the Court): Doctor, there was some mention of the fact that you went over the ground with the attorney for the property owner here. Was that in connection with this case?

A. (By the Witness): No, sir. He happened to be out there one day when I was out there. I was there with two of the lieutenants from the Navy. He wished to take a picture of the gas well and they asked me to be present. That was all.

The Court: How many more witnesses have you got?

Mr. Bourquin: Two, your Honor, with the bare possibility [847] that we would have a very short witness, but I doubt it. If we do, it shouldn't take ten minutes. We will have two valuation witnesses.

The Court: Do you think you can finish tomorrow?

Mr. Bourquin: I feel satisfied we can finish tomorrow.

The Court: We will take an adjournment until tomorrow morning, ladies and gentlemen, at ten o'clock. Please bear in mind the admonition of the Court.

(Thereupon an adjournment was taken until tomorrow, Wednesday, February 5, 1947, at 10:00 o'clock a.m.)

Wednesday, February 5, 1947

10:00 o'clock A.M.

The Court: United States of America vs. Certain Land in Contra Costa County; on trial.

NICHOLAS TALIAFERRO

recalled.

Cross-Examination

(Resumed)

By Mr. Scampini:

Q. Professor, at the session of yesterday afternoon, if I recollect your testimony, I have not had an opportunity of reading the transcript which is before me, but substantially you made the statement, if I recollect your answer, to the effect that you would not have recommended the drilling of the Cal-Bay well at the location selected, for two main reasons, 1, that, in your opinion, no anticline structure or trap existed at that location, and, secondly, because it was a highly faulted region.

A. That is correct.

Q. Do you always recommend against drilling any kind of a structure wherein it appears that numerous faults cross each other? A. Oh, no.

Q. Isn't it true that a highly faulted region, you look for them sometimes for the purpose of accumulation? A. No, I wouldn't say that.

Q. Are you familiar with the geology of the Rio Vista gas field? A. Not particularly.

Q. Have you read the Bulletin of the State Oil and Gas Supervisor issued by the Department of

(Testimony of Nicholas Taliaferro.)

Natural Resources, Division [849] of Oil and Gas, in 1941, relative to the geology of the Rio Vista Field?

A. Yes, I have read that. I don't remember the details of it. I read a great many things.

Q. Do you recall reading the following statement from the Bulletin:

“The general structure of the Rio Vista gas field is a rather broad, flat, somewhat elongated faulted dome with the axis running northwesterly. Some geologists believe that the field is located in an actual graben.”

That is a sort of an incline or depression, isn't it?

A. No. A graben is a down-faulted area. Lake Tahoe is one.

Q. “And the different settling of small blocks within the field has produced the complicated fault pattern.”

Do you recall reading that statement?

A. I don't recall reading that exact statement. I probably read it. It didn't impress me particularly.

Q. I will show you a map of the Rio Vista gas field and ask you to look at it and state whether or not it is not crossed by four main faults paralleling each other.

A. According to this map it is, yes. May I make a statement?

Q. Yes.

A. Yes. Embodied in the statement you read was this:

“It is a broad, low, closed dome.”

Q. I now ask you to look at the map and state whether or not [850] the field is not crossed by four main faults paralleling each other.

A. According to this map it is crossed by four faults—five, unless that is a road. Yes, it is crossed by faults.

Q. Professor, if you had not made a geological study of the Rio Vista field prior to the commencement of the first well, would you have recommended the drilling of that field in view of the existence of these four faults?

A. The Rio Vista field has absolutely nothing on the surface. I could not have made an examination of it. I have not a seismologist crew. I am one man. I could not have made an examination of it. That requires seismological work and seismological interpretation. Nobody could have made a geological examination of the Rio Vista field because it is buried to the alluvium.

Q. Assuming the dips were apparent to the naked eye, would you have recommended the drilling of the Rio Vista field?

A. Certainly. Had you been able to see the surface and it was a broad, closed dome, you would certainly have recommended, I would certainly have recommended it.

(Testimony of Nicholas Taliaferro.)

Q. How could you have seen a broad dome on the surface when it was all covered over by alluvium?

A. That is a purely hypothetical question.

Q. Please answer it.

A. You could have seen the top of the dome.

Q. That was the way it struck you, the mere presence of faults [851] on the property of the Cal-Bay Corporation by or of itself would not discourage the drilling of a well?

A. That could not have been a broad, closed dome.

Q. The only reason for your conclusion there that you would not have drilled a well is because, in your opinion, it was not a broad, closed dome; is that right? A. It could not be——

Q. Answer the question "Yes" or "No."

The Witness: State your question again.

Mr. Scampini: May the question be read?

(Question read by the reporter.)

The Witness: Yes; not a broad, closed dome.

Q. Referring to your map, will you please state what the meaning of the line which I am now tracing, and which runs generally in a northwesterly-southeasterly direction, and is crossed by an arrow, one pointing northwest, and the other southeasterly, at or about the vicinity of the Cal-Bay Faria well?

A. It is not at or about the vicinity. It is some 2000 feet, or some 2500 feet to the northwest.

Q. What is that?

A. That is an anticline axis. As I explained yesterday, it was so weak you could hardly ascertain it.

(Testimony of Nicholas Taliaferro.)

Q. It shows sufficiently to see it over at that location, and it could have very well extended on both sides of the line, could it not (indicating)?

A. How far? [852]

Q. I don't know. I am asking you.

A. Well, I can't tell. I show on my map that it does not extend, because the dips are rapidly reversed in another direction, right here, and right here (indicating).

Q. Aren't they reversed south of the main Willows Pass Fault?

A. I don't get your question.

Q. Aren't they found southwesterly of the main Willows Pass Fault? A. No.

Q. Where are they?

A. The dips are not toward the southwesterly, but they are toward the northeast.

Q. Is that a reversal of the dip which is found on the line indicated by you?

A. The general dip is in this direction, so when you speak of a reversal your question means a dip in this direction (indicating).

Q. Yes, that is correct. A. Yes.

Q. Professor, you heard the testimony of Mr. Norris in court, did you not? A. Yes.

Q. You heard him say before he staked out the well he used a bulldozer and excavated, tore down a portion of the hill in order to find appropriate dips before he made up his mind where to locate the well? A. Yes.

(Testimony of Nicholas Taliaferro.)

Q. You heard him say that at the place where he finally located the well he found a series of dips which indicated the anticline going on one side of the axis to the northwest, and the other side of the axis to the southeast. You heard that [853] statement? A. I heard the statement, yes.

Q. Did you go to the location where the well had been drilled to ascertain whether or not any such dip existed there?

A. I certainly did. I spent three days in an intensive search in that area. But I also said that the Navy, in their construction work, opened up a large quarry a very short distance from the well, a large quarry. I don't believe that was opened at the time of earlier examination, but in that quarry you could see the rocks very plainly exposed, and they all dipped toward the northeast at varying angles.

Q. Please answer my question. Did you find any of the dips at the location that Mr. Norris asserts exists there? A. I did not.

Q. For the purpose of arriving at your conclusion and submitting your findings and report to the Navy, did you take any statements from any of the men that had worked on the well?

A. I did not.

Q. Or talk to any of them?

A. I did not. The well had been abandoned; it was not my business to hunt up the men who drilled the well.

Q. Did you study the log of the Faria well?

A. Yes.

(Testimony of Nicholas Taliaferro.)

Q. When you say "the log," do you mean the actual log of the well, or do you mean the electric log, which is another name for the Schlumberger?

A. I looked at the Schlumberger log and I also looked at the log as submitted to the State Division of [854] Mines.

Q. I now show you a set of papers entitled, "Well Summary Reports, Division of Oil and Gas," and I will ask you whether or not that is a copy of the log that you examined, furnished to you or seen by you at the office of the Division of Oil and Gas.

A. It looks very much like it. I think—may I examine one place?

Q. Look at every page? A. Yes.

Q. There is attached to the log seen by you a photostat of a Schlumberger, which I shall now show you, Defendants' Exhibit No. 28.

A. Yes.

Mr. Scampini: I will now offer in evidence——

The Witness: I don't know whether these things in red were on it at the time.

Mr. Bourquin: Well, I think we will object to it as incompetent. The doctor has not testified that he based his findings on the statement filed by the Cal-Bay people.

The Court: I think counsel will be entitled to examine him concerning the log that he looked at, whether or not it is proper to offer this long document in evidence is another matter.

Mr. Scampini: I will offer it——

(Testimony of Nicholas Taliaferro.)

The Court: You are asking him whether he looked at it.

Mr. Scampini: I will offer it for the purpose of identification.

The Court: Of course, you have a perfect right to examine [855] him concerning it.

Mr. Bourquin: I think it has already been shown in this record that the purported formation levels on the electric log were imposed upon that log by the defendants' witnesses.

(The electric log was marked Defendants' Exhibit 36 For Identification.)

Q. (By Mr. Scampini): For the purpose of enabling you to correlate the formations disclosed by the electric log of the Cal-Bay well and the information supplied in the well log, did you examine the electric log and the log of the well drilled by Standard Oil at Honker Bay, known as the Community Well No. 1?

A. I never saw the Community Well No. 1. The only log I have seen from the Honker Bay was A. O. Stewart No. 1.

Q. Where was the A. O. Stewart well drilled?

A. About six miles northwest of Cal-Bay.

Q. Wasn't the A. O. Stewart well drilled at Suisun Bay, or was it Honker Bay?

A. Honker Bay.

Q. Are you on the payroll of Standard Oil Company? A. I am not.

Q. Have you done work for the Standard Oil Company?

(Testimony of Nicholas Taliaferro.)

A. 25 years ago I did some consulting work for them in Mexico, yes.

Q. Have you done work for any of the Standard Oil group in recent years? A. No. [856]

Q. Do you know how many whipstocks were set in the drilling of the well at Honker Bay, in the first well over there? A. I have no idea.

Mr. Bourquin: We object to this as immaterial and irrelevant, and not proper cross-examination.

The Court: The witness says he doesn't know. That ends it.

Q. (By Mr. Scampini): Have you got the electric log of the well seen by you and furnished to you by Standard Oil relative to the Stewart well?

A. No, I haven't it with me.

Q. Then, professor, will you please state how you are able to correlate the formations indicated by Cal-Bay electric log with the formations indicated by the electric log of the well drilled by Standard Oil?

A. I did not make any such correlation. You look at the log. The formation stands out very readily. All you have to do is look at it.

Q. Does that electric log state what the formation is?

A. It doesn't write in on but it tells you what it is.

Q. It tells one who is well versed in identifying an electric log? A. Yes.

(Testimony of Nicholas Taliaferro.)

Q. Had you examined electric logs of wells drilled in this vicinity prior to the examination made by you of the Cal-Bay and the Stewart Wells?

A. I have been shown such logs.

Mr. Bourquin: It seems to be going far afield.

Mr. Scampini: I am testing the knowledge and source of his [857] information upon which he bases his statements.

Mr. Bourquin: Well, I did not understand the witness yesterday to base any statement on experience in any other wells unless they were at the Kellar well, and that is not any of the wells that counsel is talking about. It is immaterial.

The Court: You can answer that.

The Witness: I have been shown logs. I never looked at them in any particular interest. They were just a matter of passing interest; someone would show me a log. I have seen logs of Rio Vista field.

The Court: I think what counsel refers to is in preparing to give your opinion in this particular matter did you examine such log? A. No.

Mr. Scampini: Will you please state, Professor, what there is about the electric log of the Cal-Bay well that indicates to you that the Martinez formation was not encountered at 4300 feet, as thereon stated by the words "Top of Martinez!"

Mr. Bourquin: As thereon placed by defendants' witnesses.

Mr. Scampini: As thereon placed——

The Court: In other words, you are asking him—I think that was already covered.

(Testimony of Nicholas Taliaferro.)

Mr. Bourquin: It was covered yesterday.

The Court: He may answer.

The Witness: My only feeling as to that is that well obviously [858] went out of the Domengine at about 4180 feet, somewhere in that neighborhood, and there is nothing below that to indicate whether you went into Martinez or what you went into, except on one point where you went into Nortonville shale, and I agree with——

Q. Do you agree we went out of the Domengine at approximately 4100 feet?

A. A little over that.

Q. Do you agree that below the Domengine you still have a Meganos formation ordinarily before you encounter the Martinez?

Mr. Bourquin: Well, I would like to——

Mr. Scampini: I am asking, do you agree, and I am using this log, you would encounter the Meganos formation between the Domengine and Martinez?

A. Do you want me to go into a discussion of the Martinez——

Q. Please answer my question.

The Court: I can see the difficulty that arises in a matter like that.

The Witness: The names Martinez and Meganos as used in our oil field parlance often have little of scientific backing. In the top section of the Martinez formation——

Mr. Scampini: I object to this witness going into a long discourse on hypothetical or theoretical matters. I ask for an answer to my question.

(Testimony of Nicholas Taliaferro.)

The Court: Well, he may give an explanation after he answers. Suppose you go back. [859]

Mr. Scampini: I will withdraw the objection. We will save some time, your Honor.

Mr. Bourquin: I don't think it is proper for you to open the subject and as soon as the subject is open to endeavor to shut the witness off.

Mr. Scampini: That matter was not opened generally, counsel.

The Witness: I think I can state the question you asked; do you find beneath the Domengine the Meganos?

Q. Yes.

A. Then you find beneath the Meganos the Martinez.

Q. Yes.

A. So the section is normal and if, as I pointed out yesterday, all the Meganos had not been removed by erosion that would be the normal sequence, yes.

Q. Did you find anything abnormal in sequence in the log or cross section of the formation of the Cal-Bay well?

A. The log will not distinguish between Martinez and the Meganos.

Q. Were you able to determine the thickness of the Meganos formation that you found in the Faria well?

A. I estimated the thickness of both the Martinez and the Meganos together, which were not separated in the well log, at about 150 to 170 feet.

(Testimony of Nicholas Taliaferro.)

The reason you can't get a closer figure or greater latitude than that is the coring was not continuous in the well.

Q. What information did you have upon which you base your statement that the thickness of the Meganos and the Martinez formations [860] combined would be approximately 150 or 170 feet?

Mr. Bourquin: I think this was covered yesterday afternoon.

Mr. Scampini: I respectfully submit I never touched upon it.

The Court: I thought you did. It is difficult for even a skilled person to follow it, but I will allow it. Read the question, please.

(Question read by the reporter.)

The Witness: I had two things, as I explained yesterday, I thought; one was the general regional thinning northward of both the Meganos and the Martinez being truncated upon the overlap of the Domengine. The other was that certain foraminifera reported to me which checked to the conclusion that at the interval of 4337 to 4372 I believe the typical unmistakable cretaceous foraminifera were found.

Q. Is that the only basis you had for your conclusion? A. That is, I thought, sufficient.

Q. Did you prepare a cross section of the formations penetrated by the Faria well No. 1?

A. Yes.

Q. Let me see it, please.

A. Those cross sections are marked on the map.

(Testimony of Nicholas Taliaferro.)

Mr. Scampini: I ask this be marked for identification as Exhibit next in order.

Mr. Bourquin: We will agree it may go into evidence if counsel desires. [861]

Mr. Scampini: I ask it be marked for identification.

(The document was marked Defendants' Exhibit 37 For Identification.)

Mr. Scampini: I will ask you to take a look at a cross section of the Cal-Bay Corporation property along the axial line prepared by Mr. John de l' Eau, and I will ask you to examine it and state whether or not you agree with the outlines of the formations penetrated and the stated thickness of the formations as found on the map before you.

A. May I ask questions regarding it? I notice here an area marked in yellow that extends to an approximate depth of 1570 feet, and says, "Tum equals miocene." I know of no miocene in the Cal-Bay well, so I cannot comment on it.

Q. Now, then, you will disagree with the cross section before you. Compare it with that, if you wish.

A. No, that's all right. I'll look at it. At the top of Nortonville he puts it 3500 feet. That I agree with. The top of the Domengine 3870; I agree with that. Beyond that I do not agree with it.

Mr. Scampini: I will ask that this be marked as exhibit next in order for the purpose of identification, your Honor.

(The cross section was marked Defendants' Exhibit 38 For Identification.)

(Testimony of Nicholas Taliaferro.)

Mr. Scampini: I think I am about through with the witness, your Honor.

Q. Did you ever engage in the business of drilling for oil or gas?

A. You mean did I ever work on a well? [862]

Q. Yes. A. No, I never.

Q. Did you ever engage in the business of drilling for oil or gas by buying into the business?

A. Yes.

Q. Have you ever discovered any oil field during your career for any company for whom you worked, or any company for whom you worked discovered an oil field on location found by you?

A. Not any commercial oil field.

Q. How about gas fields?

A. We have encountered a lot of gas, but we never found any oil field.

Q. In other words, the drilling was made in those cases upon your recommendation, was it not?

A. In some instances.

Q. So that I take it that even professors can make mistakes sometimes in their recommendations?

A. Yes. We find in production we make many of them.

Q. The fact we make mistakes does not mean that we are not sometimes right, of course. Is it not generally true that even though you may have the finest geological structure available that can be seen and can be studied in the oil and gas business, the ultimate proof of the pudding is in the oil or gas where you find it?

(Testimony of Nicholas Taliaferro.)

A. That is the way it was understood by the industry probably 40 years ago.

Q. Well, is it not generally true even today?

A. The facts, I think, speak for themselves, that the modern methods of searching for oil have cut down the ratio of dry holes to productive holes a great per cent. [863]

Q. Isn't it true that even with the finest of instruments, like geophysics and all of the history that the geologists have accumulated, it often happens that structures are drilled and found to be dry?

A. Oh, yes.

Q. It often happens that structures are repudiated by the geologists and found to be the most productive thereafter?

A. I don't know of any structure that has been repudiated, that is a good structure or surface, that has been unanimously turned down.

Q. How about the Ten Sections down at Kern County?

A. Ten Sections, that was a geophysical play.

Q. However, the geologists repudiated—

Mr. Bourquin: Wait; let him finish.

The Witness: No, not that I know of.

Q. (By Mr. Scampini): How about Rio Bravo?

A. I couldn't tell you the details of Rio Bravo.

Redirect Examination

By Mr. Bourquin:

Q. Doctor, I take it on this subject Counsel asked you, the geology business is to determine the

(Testimony of Nicholas Talaferro.)

favorability or unfavorability of the structure geologically, is that true? A. Yes, sir.

Q. He will pass upon whether there exists a structure that may contain a deposit?

A. Yes, sir.

Q. Whether it does or not is a matter for exploration? A. Yes, sir.

Q. And it is true, I suppose, that many favorable structures have been explored to no avail?

A. Yes, sir.

Q. Yesterday Counsel was asking you about the distances that this well was from certain points. I think you cleared up this morning that this well was located about two thousand feet off the extension of that little anticline there, is that true?

A. I would have to measure it. It is somewhere in that vicinity. It is a very, very weak anticline. You can hardly notice it.

Q. He was also asking you yesterday how near or how far the Cal Boy well was to this fault, and I thought you said it was 900 feet or 600 feet?

A. 900 feet.

Q. 900 feet. Now, Doctor, clearing this up—that is, this big fault that is shown on this northwest-southeast line? A. Yes, sir.

Q. And I will point to the well here. Now, is it correct to [say] say that fault is a vertical fault, that is, the fault that you find on top of the ground? Does it go straight down?

A. No, that is a thrust fault, an exceedingly common type of fault in California generally, as I

(Testimony of Nicholas Taliaferro.)

mentioned yesterday, this side had been moved to the southwest, the northeast side had been moved to the southwest of this fault which dips down underneath the region. The fault is rather a low angle down here, steepening to the north, which is the common habit of thrust faults.

Q. So that we will understand that, did you find that that fault, when you speak of thrusts, that fault, as it went below the surface, dished in the direction, if I may use that term, dished in the direction of the Cal Bay well? A. Yes, sir.

Q. It did. In other words, a continuation of it would take it across and under the Cal Bay penetration? A. Yes, sir.

Q. Doctor, from your investigation and findings, will you tell us this: Did the Cal Bay well penetrate that fault? Did it cross through it?

A. In my opinion it did. It would have been impossible to avoid going through that fault, because of its dip.

Q. Now, this cross-section that Counsel asked you about, does that give us any information on that subject?

A. It gives me an interpretation of the information. That is all that I can say. [S66]

Q. And this, too, was a cross-section that you prepared from the material that you gathered on the ground, was it? A. Yes, sir.

Mr. Bourquin: We will offer it in evidence, if the Court please, as Government's exhibit next in order.

(Testimony of Nicholas Taliaferro.)

The Court: It may be admitted.

(The map in question was thereupon received in evidence and marked Plaintiff's Exhibit X.)

Q. (By Mr. Bourquin): Is that a correct way to put that up, Doctor? A. Yes, sir.

Q. Doctor, would you be good enough to take the pointer so that the Jury may see what you are pointing to and tell us what your cross-section map discloses in that respect?

A. There are three cross-sections, and I might point them out. The upper one is shown by this line which goes along the intersection of the Arnold Industrial Highway and the Willow Pass Road in a northeast-southwest direction; Section D-B is through the Cal Bay well; Section C-C is a section through the Kellar well, the Standard Oil Company well.

Q. You are in the way of the Jury.

A. Pardon me. The symbols are the same. This is the Markley. It is labelled the Nortonville shale, the lower part of the Markley; this is the Domengine; this is the Martinez and Meganos combined; and this is the Cretaceous by the symbols used. The well is located here (indicating).

Q. You are pointing to the center cross-section on the map; which well is there?

A. The Cal Bay.

Q. The Cal Bay well?

A. In my opinion that well must have crossed this thrust fault somewhere in its course. One reason for that is, of course, the dip of the fault

(Testimony of Nicholas Taliaferro.)

back toward the wall, and the other is the apparent thickening, the rather unexplainable thickening of the Markley formation. The fault is shown crossing the Cal Bay well somewhere around twenty-seven or twenty-eight hundred feet.

Q. In other words, you have on this cross-section in the center of this exhibit, Plaintiff's Exhibit X, shown the trajectory, if I may call it that, or projection of the Cal Bay well?

A. A cross-section through as though you were standing looking at it.

Q. Looking at it across the ground from underneath? A. The side.

Q. And you show on here that the well crossed that thrust fault, that big fault thrusting under at a point, you say, about twenty-seven hundred feet or thereabouts? A. Thereabouts.

Q. Does the same cross-section below with reference to the Kellar well what you described yesterday of how the Kellar well had three times penetrated the same structure?

A. The same beds, yes.

Q. You will have to get on the other side, Doctor. You still [868] have your university habit.

A. I have many of them. This was clearly shown on the electric log, that it penetrated the Domengine and then again penetrated the Domengine and then again penetrated the Domengine—three times. The once was almost complete, another a partial penetration, and the third penetra-

(Testimony of Nicholas Taliaferro.)

tion was the complete penetration of the Domengine. In my opinion that can only be explained by a bedding thrust.

Q. (By Mr. Scampini): You are referring to the Kellar well, aren't you?

A. I am referring to the Kellar well, yes.

Q. Not to the Cal Bay?

A. No. And in that movement these beds buckled; they might have, you might say, stubbed their toe and tended to roll over. That is the normal thing.

Q. In other words, the bed is initially like two hands together (indicating), and when it is folded, it is folded over—stubbed its toes—and presents three planes? A. Slid over, yes.

Q. So we will understand this, Doctor, for any further reference, what does the color at the bottom of each of the cross-sections, the green, represent?

A. That is the customary color of the Cretaceous, green, standard the world over.

Q. So we will know what it has reference to, what does that top-section refer to that you presented there?

A. That is the section I mentioned through the northeast-southwest section, through the intersection of the Arnold Industrial [869] Highway and the Willow Pass Road that goes through that intersection.

Q. Is that a point between the location of the Cal Bay and the Kellar well?

A. No, sir, that is a point north of the Cal Bay.

(Testimony of Nicholas Taliaferro.)

Q. North of Cal Bay. All right.

A. Northwest.

Q. Doctor, one last question: From your examination and study of the geology there, is there any reason to say, or is there any more reason to say that the Cal Bay well would connect with the Honker Bay than to say that the Kellar well would connect with the Honker Bay?

A. None whatsoever.

Mr. Bourquin: I think that is all.

Recross-Examination

By Mr. Scampini:

Q. Professor, referring you to the map which has just been offered in evidence as Plaintiff's Exhibit X, I understood you to say that there was no anticline found by you; will you tell me what the meaning of this anticlinal fold is located on your Section B of your map?

A. That is only an anticline if you tip the plane of the earth about fifty degrees; it is a terrace.

Q. What is the meaning of that fold, that rounded dome-like effect on your section?

A. I do not regard that as a rounded dome-like effect. It is flattened away from the well and then continues on downward.

Q. Do I understand you to say that the only difference then [870] between you and Mr. Norris is that the apex of the anticline is a little further to the northeast than what Mr. Norris claims it is?

A. No, from this map there is clearly no closure in a southwest direction.

Q. I did not ask you that question, Professor. I will ask the reporter to read it to you.

(Question read.)

A. That is not the only difference. I think the dips as shown by Mr. Norris were 25 degrees. I found no dips of that extent. Five or six degrees at the outside, very gentle.

Q. Please state whether or not on your Section B the apex of the anticline shown to exist there is a little farther to the east than as indicated on Mr. Norris' map? A. About two thousand feet.

Q. Please state whether or not in your opinion it would be impossible for the fault which you shown on Section B to the west and the fault which you show to the east to act as a closure or a seal to that anticline?

A. Yes, I think it would be very difficult.

Q. I did not ask you whether it was difficult; I asked you if it was impossible in your experience as a geologist?

A. Yes, it is impossible because the anticline is not closed anywhere.

Q. Please state whether or not a fault at the location that I am now indicating could not act as **a seal to the structure [871]** found in between the two faults in your experience as a geologist?

A. It could not.

Q. What is the meaning of block faulting?

A. Well, it would take me about two hours.

Q. Do not block faults sometimes act as seals and cause traps?

A. I don't understand what you mean by block faulting.

(Testimony of Nicholas Taliaferro.)

Q. Where you have a series of faults, one on each side, or four faults, wouldn't the structure between those four faults be trapped in by the faults around them? A. Not necessarily.

Q. Could it be?

A. Oh, yes, it could be. As a hypothetical question it could be.

Q. You say that the well of the Cal Bay penetrated in your opinion the Willow Pass fault at about twenty-seven or twenty-eight hundred feet, is that right? A. 2764-2768.

Q. Please look at the Schlumberger of the well of the Cal Bay, which is our exhibit in evidence here, and state where on the Schlumberger there is any indication to you of the penetration of a fault at twenty-seven or twenty-eight hundred feet or any other place, the exhibit number being 28?

A. You can't take the penetration of the fault on the Standard well on the Schlumberger. I looked at it for that purpose. I used a statement in the log as furnished to the State Division of Mines as a possible position of the fault.

Q. Would you concede, then, there are no indications of [872] faulting in the Cal Bay well at any place between the surface and the 4300-foot level where the electric log stopped? A. No.

Q. You do concede it?

A. I do not think you can pick those things.

Q. Did you examine the Honker Bay electric log? A. Which well?

(Testimony of Nicholas Taliaferro.)

Q. Rather, the Kellar? A. Oh, yes.

Q. Did you not——

Mr. Bourquin: So we will not be confused, which are you talking about?

Mr. Scampini: I will reframe the question.

Q. Did you examine the electric log of the Kellar well drilled by Standard Oil? A. Yes, sir.

Q. Did you not find on the electric log of the Kellar log indications of faulting by reason of the fact that the same formation was crossed three times?

A. Yes, but of the fault itself there is no indication on the log.

Q. But you did find a crossing of the same formation three times? A. Oh, yes.

Q. Did you find any similarity of formations having been crossed more than once on the electric log of the Cal Bay well?

A. They do not show up in the markings. No one could do that.

Q. I will ask you to take a look at the cross-section of A-B on the map of Mr. de l' Eau, which is Exhibit 32 of the [873] defendants, and you will note on cross-section A-B Mr. de l' Eau has marked a fault to the southeast of the Cal Bay well. Isn't that the same fault that is referred to by you on your cross-section B?

A. It can't be, because I am very positive of the direction of the dip of the fault.

Q. In other words, you disagree with Mr. de l' Eau's findings that the dip of the fault referred to

(Testimony of Glenn Ferguson.)

by you in your Section B is not towards the well, but away from the well, is that right?

A. That was a little involved.

Q. I perhaps did not make——

A. I maintain the fault dips in toward the well. He maintains it dips——

Q. In the other way, in the opposite direction?

A. Yes.

Q. So if Mr. de l' Eau's theories are correct, the Cal Bay well would not have penetrated the fault at any stage of the drilling, would it? A. No.

Mr. Bourquin: I object to that as argumentative, your Honor.

The Court: Yes, sustained.

Mr. Scampini: That is all.

Q. (By the Court): Doctor, before you leave the stand, we have listened in this court room for hours to technical discussions of geology, and in the proper administration of justice, so that those of us who have not the technical knowledge may have just a brief picture of the relationship of [874] the geology to the subject matter of trying to put a value, if any, upon this property, the Court would like to ask you one or two simple questions:

The various geological structures that you have referred to, Cretaceous and the like, are merely descriptive of an area in the earth's surface that depends upon age, isn't that right?

A. Yes, sir.

Q. In other words, the lower down you get in

(Testimony of Nicholas Taliaferro.)

the earth's surface, the longer ago it was that Nature made that deposit of land there?

A. Yes, sir, but may I say——

Q. Generally speaking, is that correct?

A. Yes.

Q. I am not trying to get into any technical discussion. Therefore you find all through any land area, such as in California, or other places, the various geological structures depending upon age in the ground, won't you?

A. Not always. There are some startling exceptions.

Q. Leave out the exceptions. In the subject of geology as it applies at least to the exploration for oil or gas, generally speaking, these structures that you referred to are the structures that represent in point of time where Nature has made deposits, isn't that right?

A. Yes, sir, but there are some oil fields where there have been great thrust faults and they have started with the idea of getting production out of the eocene, started in the miocene, and have gone down through the eocene into the pliocene, very late material, [875] because a great thrust has moved it.

Q. It may be by some cataclysm that Nature has distorted those structures, but I am speaking in general.

A. In general, as you go down they get older.

Q. It is also true, is it not, for the elucidation and information of this Jury, that certain of the

(Testimony of Nicholas Taliaferro.)

structures are places that oil is most likely to be found? A. Certain of the ages.

Q. Certain of the ages; if you have the age present, then it at least presents the possibility of finding oil? A. Yes.

Q. And certain others of the structure do not present the possibility of finding oil there?

A. Yes, your Honor, that is correct.

Q. And so the geologist sets about trying to discover where the stratas are that are most likely to at least afford the opportunity of trying to find the oil there? A. Yes, sir.

Q. That is the purpose of the geologist?

A. That is the purpose of the geologist.

Q. Now, there are hundreds of thousands of places where the geological structures are present where oil might be found where it is not found, is that right? A. That is correct.

Q. And there are literally thousands of explorations that have taken place in areas where the strata is such that there is a possibility of finding oil, where oil and gas have not been found?

A. Yes. [876]

Q. And all the geologist does is to try to find what the strata is, and he tries to find the other physical facts that might indicate that Nature has created a reservoir for oil, and if he finds that, he says that is a likely place to find oil?

A. Yes. He first tries to find source beds that are organic, and then a structure.

(Testimony of Nicholas Taliaferro.)

Q. And then from then on the fellows who are trying to find the oil take up the ball?

A. Yes, sir.

Q. They go and explore, and they may or may not find it there?

A. That is correct.

The Court: That is all I have to ask.

Mr. Bourquin: Shall I call another witness?

The Court: Is this one of your opinion witnesses?

Mr. Bourquin: No, I have a witness who may taken ten or fifteen minutes.

The Court: Suppose you put him on.

GLENN FERGUSON

called as a witness on behalf of the plaintiff; and being first duly sworn, testified as follows:

The Clerk: State your name to the Court and Jury.

A. Glenn Ferguson.

Direct Examination

By Mr. Bourquin:

Q. Mr. Ferguson, what is your business or profession?

A. Micro-paleontologist. [877]

Q. Where do you come from?

A. Bakersfield, California.

Q. Are you the same Ferguson, the micro-paleontologist, we heard referred to last week that examined some of the cores on the Cal-Bay well in 1943?

(Testimony of Glenn Ferguson.)

A. I presume so. I examined samples from that well at that time.

Q. Would you just tell us in your own words, Mr. Ferguson, what a micro-paleontologist's examination of a core sample consists of?

A. Yes. The geologist and the micro-paleontologist in the present scheme of oil field development work as a team. The geologist, or usually some younger member of the geological department will make collections of core samples at the well at the time the well is drilling or subsequently, or shortly subsequently thereafter.

The Court: May I interrupt just a moment?

Mr. Bourquin: Yes, your Honor.

The Court: It does not appear to me that at any stage of this case it has ever been explained to the Jury, although they may have gotten it, what a core is. The term has been used a great many times, and I think it might be explained to the jury, and perhaps with the consent of all defendants and the plaintiff, it is a piece of section of land or strata that is brought up by an instrument during the course of drilling, is that right?

The Witness: Yes, that is essentially correct. A core is obtained generally through a hollow bit. The end of [878] the bit is hollow with a barrel inside, and it simply drills around and leaves a portion of the formation sticking up through the core barrel, and it has a type of catcher that breaks the formation loose, and then they can pull the core either out by means of removing the drill pipe from

(Testimony of Glenn Ferguson.)

the well or in some instances it can be removed by means of a wire line. They have a cable that runs down sometimes to pick up a core or core barrel, which they call a wire line core barrel, and the core is simply a portion of the formation obtained from the bottom of the hole at the time of the drilling.

The Court: I am sorry to have interrupted.

Mr. Bourquin: I appreciate that, your Honor. I think that is right. Nobody has taken occasion to go into that.

The Witness: These samples, to go on with my story, are obtained from the cores at any depths. The core, as it is removed from the core barrel, is usually labeled as pertaining to depth, and then those samples are obtained and usually placed in bags, or sample bags, and labeled as to depth, and delivered to the geological laboratory, where it becomes the duty of the micro-paleontologist to examine those cores with the aid of the microscope.

Generally the samples are disintegrated by means of boiling the core samples in caustic soda or sometimes water, as the case may be, to soften or slake the formation. Those samples, after they have been slaked, are usually shuffled [879] through a series of screens. The finest usually is 100 or 150 mesh—in other words, that means 150 or 100, as the case may be, very tiny wires to the inch, which leaves very, very fine openings for the screen.

All of the very finest material is washed through, leaving on the fine screen a residue consisting usu-

(Testimony of Glenn Ferguson.)

ally of the organic material present in the core sample, together with sand grains, and possibly some small particles of carbonaceous matter and shale particles.

Then the material is dried and examined, and usually we find in that residue a series or a number—not always, but generally we find a number of organisms called foraminifera. Foraminifera are micro-organisms that are generally unicellular when living, but we find in these cores, of course, only the fossil remains of those foraminifera. They are nothing more to the layman than small microscopic seashells. These seashells have been classified through the years according to the genera or genus as well as the species. We have found with study over a number of years that certain ones of those individual species have stratigraphic significance. I mean by that that they will be confined to certain intervals in drilling downward through different formations. They will be confined may some of them to only a few feet, sometimes others will range through an interval of several hundreds of feet. We chart the range of these species, the stratigraphic [880] range down through the formations, and by comparison of one well with another we are able to determine not only the age of the formations penetrated, but we are able to check the relative depths of the different formations penetrated in one well as compared to another well. Thus in such a manner we can determine the sub-surface structure of formations. At least we can interpret the sub-

(Testimony of Glenn Ferguson.)

surface structure and in so doing we can usually arrive at some—very often we can arrive at the better places to drill another well. We have to start out generally from scratch and then by obtaining information from some holes that may prove to be dry wells, we can very often make better locations by this means of sub-surface survey.

In going back to the thought of the geologist and the micro-paleontologist working as a team, we have to depend on the different geologists to sample these cores and send them to our laboratory. We have learned that they are reliable, as you can readily appreciate from the fact that we have been able to narrow down and make oil discoveries from such a study. I believe in general that constitutes the duties of a micro-paleontologist.

Q. Mr. Ferguson, did you make your micro-paleontologist's examination of cores taken from the Cal-Bay well during the course of its exploration during the year 1943? A. Yes, I did. [881]

Q. Did you come to the micro-paleontologist's conclusion as to what formation or bed the well had penetrated in that 1943 exploration?

A. Yes.

Q. Will you tell us, please, what it was?

A. May I refer to my notes to refresh my memory? I found in the course of the study that the Markley sand, which you have all heard mentioned here before, extended to a depth of 3,500 feet, at which depth the Nortonville shale was penetrated. The Nortonville shale was approximately 305 feet

(Testimony of Glenn Ferguson.)

thick. The Domengine formation underlying the Nortonville shale was recognized as having a thickness of approximately 92 feet. Beneath the Domengine a white sand was penetrated. That white sand had no organic remains. However, based on the sequence—and that is a tool that geologists use to determine or help or assist in determining the age of formations because it comes next in sequence—that sand was presumed to be related to the Lone sand or it possibly be termed as a portion of the Capay. Some of these different names are subject to variations depending upon a matter of definition.

Beneath this white sand, which was 285 feet thick——

Q. What depth are you at now?

A. The Nortonville shale extended between 3,805 and 3,897; the Domengine, if I may review this a minute, extended from 3,897 to 4,189. No, I am sorry. I misread that. The Domengine extended from 3,805 to 3,897. The white sand, which I just referred to, extended [882] from 3,897 to 4,182. Then beneath the white sand another series of beds were penetrated, which contained a relatively meager micro-fauna and may be subject to some question as to the exact determination. But based on the species present it is presumed to be the Capay formation, or what we used to term Meganos II Division of Clark.

Then beneath the Capay, or the Meganos, if you so choose to call it that, we found an interval

(Testimony of Glenn Ferguson.)

of about a hundred and twenty-two feet, which contained a very meager fauna. The exact determination is subject to some question. It may be Martinez or it may be Cretaceous. The evidence is not too clear.

That gets us to 4,337 feet. The interval below that point, from 4,337 to 4,398, contained a Cretaceous fauna, including species which are well recognized, and I think any micro-paleontologist having access to the same group of species would identify it as Cretaceous.

This lower portion was first considered—the portion from 4,215 to 4,237, the interval which is subject to question, I first considered to be Martinez. On subsequent study, in a close scrutiny of a portion of the carbonized wood fragment,—the flora we call it—are found in the core samples, some of those species strongly suggest it to be Cretaceous, although that perhaps is not a positive means of identification.

Q. When we get to the level where it had the one characteristic [883] and not a dual there, then, at what level did you find the well penetrated the Cretaceous?

A. The first positive fauna occurred at 4,337.

Mr. Bourquin: 4,337 feet. You may cross-examine.

The Court: We will take the morning recess at this time, ladies and gentlemen. Please bear in mind the admonition of the Court.

(Recess.) [883-a]

(Testimony of Glenn Ferguson.)

The Court: You may proceed.

Mr. Bourquin: I have one further question I would like to ask this witness.

Q. Mr. Ferguson, will you refer again to your data and tell us where it was that you located or found the cores showing the Markley—is that the right term?

A. Yes. The Markley is a sand made up of upper eocene. In this well it extended from presumably the surface, my first sample was 160 feet, from that point to 3500 feet.

Q. Was that from your experience usual or unusual thickness of Markley?

A. Yes, it is quite considerably thicker than normal.

Q. What would explain that?

A. One of two things; first, steep dips or thrust faulted.

Q. When you say thrust faults, you mean penetration by a fault?

A. Duplication of sections such as we talked about here with Dr. Taliaferro?

A. Yes.

Mr. Bourquin: No further questions.

Cross-Examination

By Mr. Scampini:

Q. How did you obtain the cores examined by you for the Cal-Bay?

A. They were furnished to me by—if I may digress a moment.

Q. Yes.

A. At the time of the examination I was em-

(Testimony of Glenn Ferguson.)

ployed by the Union Oil Company. They were furnished to me by Mr. E. S. Pickett, who was a Union Oil Company scout, who had direct [884] connection with the Cal-Bay Corporation.

Q. Was Mr. Pickett scouting the property of the Cal-Bay during the course of the drilling of the well for the benefit of Union Oil Company?

A. It is a habit to scout——

The Court: Just answer “Yes” or “No” to his question.

A. I will say “Yes.”

The Court: He wants to know what he did. There is nothing wrong about scouting.

The Witness: May I say, I would like to just add——

Mr. Scampini: That is all I asked.

Q. Were any of the cores shipped to you by express from the Cal-Bay office in Pittsburg or Antioch? A. I don’t recall.

Q. Were any cores ever delivered to you in person by Mr. Norris?

A. There were—I can’t state positively, I don’t recall.

Q. Do you recall talking to Mr. Norris at or about the end of October, 1943? A. Yes.

Q. Did he call at your office?

A. Yes, he did.

Q. Did he call more than once?

A. It seems to me he did; he may have been there twice.

Q. Did Mr. Pickett call by himself?

A. As I recall, he was there with him.

(Testimony of Glenn Ferguson.)

Q. Did not Mr. Norris have with him the Schlumberger or electric log of the Cal Bay well, which is Defendants' Exhibit 28 in evidence, and was not that electric log or Schlumberger [885] examined by you in the presence of Mr. Norris?

A. Well, I have looked at the electric log at various times and I don't recall whether we looked at it at that time, or whether we did not.

Q. Is it not a fact that Mr. Norris had with him the identical electric log, or a photostat of the electric log before you, and he and you discussed at what place on the electric log you should mark the top of the Nortonville shale?

A. I have only a vague recollection of the matter. It seems to me a sample of that kind was discussed.

Q. Did he not ask you, by that I mean did not Mr. Norris ask you, "Mr. Ferguson, based upon your study of the cores, where do you believe we encountered the top of the Nortonville shale in the Cal Bay well?" And did you not say to him, "At 3500 feet?"

A. You are going back a long time to call on one's memory.

Q. To the best of your recollection.

A. To the best of my recollection that is correct.

Q. Did not then Mr. Norris write on the electric log the words, "Top of Nortonville" opposite "3500 feet" in your presence?

A. I don't recall that he did. He may have.

(Testimony of Glenn Ferguson.)

Q. Did not Mr. Norris thereafter and at the same conference, ask you, "Mr. Ferguson, based on your studies of the cores in this well, where do you believe we met the top of the Domengine?" And did you not say to him, "At approximately [886] 3800"—what intervals are these, 20 feet?

A. 10 feet.

Q. "3820 feet?"

A. Well, there, again, you are calling on my memory. We may have discussed some such depth as that. It may have been variable from that. I don't recall, but in some such interval as that.

Q. Did he not thereafter say, "Mr. Ferguson, based upon your studies of these cores, where do you believe we met the top of the Martinez?"

And did you not say to him, "4340 feet," and he marked the top of the Martinez at 4340 feet on the Schlumberger?

A. Now, in my testimony a moment ago I stated that I believed at first there was a portion of this interval that we did have some Martinez. By way of answering your question, may I state this——

Q. Will you please answer the question "Yes" or "No," and then if you desire to explain you are at liberty to so explain.

A. I will say yes, with this reservation, that I cannot remember the exact depth discussed at that time, and further, I will explain this, that in the interim——

Q. What do you mean by "interim?"

A. Well, subsequent to the time that the well

(Testimony of Glenn Ferguson.)

was drilled, and subsequent to the time that the samples were first examined, these samples have been re-worked in a great deal of detail, and I might add that we gain an experience——

The Court: Well, let me interrupt you. All the attorney wants to know is, did you at that time, have you any memory [887] of having made that statement at that time, and if you did do work later on, or did you change your mind about it later on, irrespective of the reasons or anything? Is that right?

The Witness: Yes, that is essentially correct.

Q. (By Mr. Scampini): Did you then further tell Mr. Norris or Mr. Pickett that the Cal Bay well had penetrated cretaceous formation during the year 1943, down to 4394 feet?

A. No. With this exception—Well, I can limit it to that statement, no.

Mr. Scampini: No further questions.

Redirect Examination

By Mr. Bourquin:

Q. Mr. Ferguson, after you talked to Mr. Norris did you make any further examination of samples from the Cal-Bay well? A. Yes.

Q. And you re-worked them, as you put it?

A. Yes.

Q. Did the further examination leave any doubt in your mind as to what formations had been penetrated?

Mr. Scampini: That is objected to as leading and suggestive.

(Testimony of Glenn Ferguson.)

The Court: Of course, he has already testified to that. He said the conclusions he gave today were the results of his reworking of his material at a time subsequent to the time that counsel was referring to. That is right, is it not?

The Witness: That is correct.

The Court: I thought he stated that on direct examination. [888]

Q. (By Mr. Bourquin): What was the depth that you were quite sure the cretaceous had been penetrated, 4,347 feet? A. That is right.

Mr. Scampini: I object to that as leading and suggestive.

The Court: Overruled.

Mr. Bourquin: That is all.

Recross-Examination

Mr. Scampini: I will ask leave to ask a few more questions on the same subject.

Q. When did you re-work these cores?

A. Within the last six months.

Q. At whose request?

A. It was in connection with this—if you mean in connection with this trial——

Q. At whose request?

A. Mr. Blade, I believe it was.

Q. Did you keep all the cores of the Cay-Bay that had been examined by you in 1943 and still had them available six months ago? A. Yes.

Q. Do you keep all cores examined by you?

A. Yes.

(Testimony of Glenn Ferguson.)

Q. What did you do for the purpose of re-working them?

A. Samples were re-examined, and then wherever any question arose as to the form of content a portion of the original material was examined, and in addition to that further samples were obtained from another company having sampled the well shortly after the drilling, and those samples particularly developed, and each one, the former, that is, the species from which it was taken, were obtained from the original set of [889] samples.

Q. Do I understand you to say that new samples of cores from the Cal-Bay well were furnished to you six months ago by another company?

A. That is correct.

Q. What company furnished you those?

A. Standard Oil Company.

Q. Did they tell you at what depth the cores which were furnished to you six months ago from the Standard Oil Company had been obtained?

A. They were labeled and each individual sample was labeled according to depth.

Q. Do you know whether those cores delivered to you by the Standard Oil Company were cores taken from the Cal-Bay well?

A. I have every reason to believe so, yes.

Q. Do you know of your own personal knowledge?

A. I do not.

Mr. Scampini: No further questions.

Mr. Bourquin: That is all.

W. F. BARBAT

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name?

A. W. F. Barbat.

Direct Examination

By Mr. Bourquin:

Q. What is your business, Mr. Barbat?

A. I am employed by the Standard Oil Company of California.

Q. In what connection?

A. I am presently assistant chief geologist of the company.

Q. Were you so connected with the company during the explorations [890] made on the Cal Bay property by the Cal-Bay Corporation in 1943?

A. In 1943 I was serving in the capacity as senior geologist with residence at Taft, California.

Q. Did you cause core samples to be gathered from the Cal-Bay well during the course of 1943?

A. I did not cause any such samples to be taken.

Q. Were any gathered, to your knowledge?

A. To my knowledge, samples were collected frequently during the course of the drilling of that well by our geologists who were located in that area. Those samples were sent at frequent intervals to the laboratory at Taft over which I had jurisdiction.

Q. Did you receive samples at any time as cores from the Cal-Bay well in the explorations of 1943?

A. That's right, I received——

Mr. Scampini: We object to the evidence because it is based entirely upon hearsay.

(Testimony of W. F. Barbat.)

Mr. Bourquin: It seems to me, your Honor, that what we are offering here is to show the origin of samples gathered in the usual course and custom of a trade or business. That is what I am undertaking to elicit from this witness.

Mr. Scampini: He has no personal knowledge.

The Court: Well, I think counsel's objection is good unless you can show that—if there is any value that you wish to attach to this particular testimony you would have to show the man actually took these cores and delivered them. I [891] don't see how you can avoid that.

Mr. Bourquin: Well, I will say, your Honor, let me put it this way:

Q. Did you deliver samples to Mr. Ferguson for examination? A. Yes.

Mr. Scampini: We will object to that on the ground it is incompetent, irrelevant, and immaterial.

The Court: I will overrule that objection.

Q. (By Mr. Bourquin): Do you know by whom the samples that you delivered to Mr. Ferguson were gathered?

A. Yes. My record shows that the samples were gathered by——

Mr. Scampini: The question is based upon hearsay. It is not what the record shows. I move to strike out the answer as not responsive.

The Court: Yes. I will strike it out.

Q. (By Mr. Bourquin): Do you know by whom they were gathered?

A. Only by the record.

(Testimony of W. F. Barbat.)

Mr. Scampini: I move to strike out any testimony on the part of the witness as being based entirely upon hearsay.

The Witness: Correspondence. May be I will put it that way.

Mr. Scampini: Same objection.

Q. (By Mr. Bourquin): Was the record kept under your supervision in the course of your business with the company at any time?

Mr. Scampini: I object to that as incompetent, irrelevant, and immaterial. [892]

The Court: I am inclined to think the objection is good, Mr. Bourquin. I don't see how you can prove by some record as to whether or not a core was taken from the Cal-Bay well. If it is of any importance in this case——

Mr. Bourquin: Well, I thought, your Honor, to prove the course of business might suffice it.

(Further discussion.)

Mr. Bourquin: Your Honor, I will have no further questions of Mr. Barbat. Thank you, Mr. Barbat.

(Witness excused.)

H. K. ARMSTRONG

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name to the court and jury?

A. H. K. Armstrong.

(Testimony of H. K. Armstrong.)

Direct Examination

By Mr. Bourquin:

Q. Mr. Armstrong, what is your business or profession?

A. I am a consulting geologist and engineer.

Q. Will you just state for us what has been your training and experience in that line?

A. I graduated from the University of Minnesota——

The Court: Is this a valuation man?

Mr. Bourquin: Yes.

The Witness: I graduated from the University of Minnesota in 1918, with the degree of Engineer in Mining. After serving [893] in the Navy I returned to the University and took some graduate work in geology. Following that I worked at various mines as a mining geologist in western United States and South America, and returned to the United States in 1923. I had a year's graduate work at the University of California, Berkeley, in geology. Following that I was employed by the Shell Company for somewhat over a year. Then with the Superior Oil Company for about three years. Then the Prairie Oil & Gas Company two years, and in 1930 I went into independent consulting work, specializing in petroleum geology and engineering, and have been engaged in that with offices in Los Angeles since that time.

(Testimony of H. K. Armstrong.)

Q. Will you state for whom, some of the concerns for whom you have done work in the course of your work as consulting geologist and petroleum engineer?

A. The Dominguez Oil Field Company, Standard Oil Company, General Petroleum Company, George F. Getty Company, Pacific Western Company, Richfield Oil Company, Reserve Oil & Gas Company. Many other companies, small and large; I don't recall all of them now.

Q. Have you, in your experience, Mr. Armstrong, appraised oil and gas rights for purposes of purchase and sale? A. Yes, I have.

Q. Have you, in your experience, participated in capacities in explorations for oil and gas?

A. Yes.

Q. Have you any familiarity with the subject in the field of Northern California? A. Yes.

Q. Let me ask you this: You have been here during the progress of the trial? A. Yes.

Q. Have you in your experience seen and studied the experiences of those engaged in the drilling for oil and gas? A. Yes.

Q. Have you seen and encountered blowouts in such explorations? A. Yes.

Q. Of what degree, can you tell us?

A. Small blowouts usually, small showings of gas; some enough so that the oil flowed.

Q. Have you made a study and investigation of the property that is subject to this action, the Cal Bay property and the leases at the location?

A. Yes, sir.

(Testimony of H. K. Armstrong.)

Q. Have you been on the property, Mr. Armstrong? A. Yes.

Q. When were you first on that property in the course of this proceeding or the exploration?

A. I do not recall exactly. I visited the well in the course of its drilling at least twice; once in the fall of 1944, I recall particularly, and some time prior to that.

Q. Have you made a study of the property in the immediate area surrounding?

A. Yes. I am particularly familiar with the Rio Vista field, where I have been employed by Peter Cook, gas operator.

Q. Is this Cal Bay property, as was stated here, surrounded [895] by producing gas fields?

A. No.

Q. Have you mapped the Cal Bay area at the outlying areas of northern California in the field of oil and gas exploration?

A. Yes, I have prepared a map.

Q. Have you it with you.

A. Yes, I have.

Mr. Scampini: May we see it, please?

(A map was handed to Mr. Scampini.)

Mr. Scampini: That seems to be fairly correct.

Mr. Bourquin: If there is no objection, your Honor, we offer the map in evidence, so it may be put up and have the witness explain it.

The Court: It may be admitted.

(Thereupon the map in question was received in evidence and marked Plaintiff's Exhibit Y.)

(Testimony of H. K. Armstrong.)

Q. (By Mr. Bourquin): Mr. Armstrong, will you take the pointer and tell us what your map depicts, please?

A. The map is an outline map showing the land divisions between a point just immediately north of Madera and extending some twenty miles north of Sacramento, and extending between the Sierra Nevada on the east and the Bay district on the west.

Q. Is this a map that you made yourself or is it some published map that you colored?

A. No, this is a map I prepared myself a number of years ago to keep track of gas developments in the area. [896]

Q. Can you identify for us on your map the location of this Cal Bay Faria property?

A. There is an area outlined in black in the southwest quadrant of the map, the boundaries of which coincide with the map submitted by Dr. Taliaferro.

Q. That is Plaintiff's Exhibit W, is that right?

A. That is right.

Q. In other words, you have outlined on this diagram the area embraced in Dr. Taliaferro's map, Plaintiff's Exhibit W, at the place I have indicated?

A. That is right. It is outlined in black.

Q. Can you with that show us the location of the Cal Bay well?

A. The Cal Bay well is shown by a small circle near the northwesterly portion of that area.

Q. The other circle shown in that area represents what?

(Testimony of H. K. Armstrong.)

A. That is the Standard Kellar No. 1.

Q. Does your diagram also show, will you tell us, the producing oil and gas fields within the area that it embraces?

A. The map shows by color, either red or green, the producing gas fields. There are no oil fields in this area.

Q. Will you point out to us by color what fields it shows us?

A. I might say the red indicates fields which produce from the formations of the eocene age and the green the fields which produce from formations of the Cretaceous age, and beginning at the top, the field labelled Vernalis is a small field producing from Cretaceous. The next further to the [897] northwest is the Tracy field, also productive in the Cretaceous formation. Then somewhat farther north, near the city of Stockton and west of it, there is another field known as the McDonald Island field, which produces from the eocene; and then near the town of Lodi two small fields, both producing from formations of the eocene age; westerly of Lodi and near the town of Thornton, the Thornton gas field produces from formations of the eocene age.

Then, more or less in the center of the map, the largest area, colored red, is indicated the Rio Vista field, which is the largest of them all by a very great margin, and it is also producing from the formations in the eocene age.

(Testimony of H. K. Armstrong.)

Immediately north of Rio Vista is the Cache field, which produces from formations of the eocene age. Northerly farther, near the town of Dixon, is a field known by that name, producing from formations of the eocene age.

At the place labelled on the map Fairfield, not very far away from Davis Junction, there is a field known as Fairfield or Fairfield Knolls, which produces from formations of the eocene age.

South from there is an unnamed discovery, a rather recent one, also producing from eocene; and north from there an unnamed discovery of recent date producing from the eocene.

About six miles west of Rio Vista, Kirby Hills field is indicated. That produces likewise from formations of the [898] eocene age.

Southwest of that three or four miles is the Suisun field, and south of Kirby three or four miles is the Honker gas field, all of which produce from formations of the eocene age.

Q. What do the circles that you show on your map that are scattered over the extent of it represent?

A. The small circle enclosed by the larger circle indicates the location of a well drilled exploring for gas which has failed to find a commercial discovery, known as a dry hole. It is so labelled on the legend of the map.

Q. Can you tell us, so we will have it for our record, does your map show, or are there any producing fields south or west of the Cal Bay location?

A. There are none.

(Testimony of H. K. Armstrong.)

Q. By the way, for purposes of orienting ourselves now, does your map show the Potrero Hills location we have talked about here?

A. Yes, I am pointing to an area outlined with a black line which says, "Potrero Hills". That is a prominent topographic formation found out in the middle of the mud flats of the Sacramento River.

Q. Each one of these circles, the larger one enclosing the smaller, represents an exploration that was made and failed to find a commercial deposit?

A. Yes, that is correct, as far as—the map is not up to date. There are a good many more dry holes than shown. I think the map is approximately up to the end of 1945. [899]

Q. Approximately to the end of 1945, to that extent it shows producing fields and it shows the dry holes, is that correct?

A. That is right.

Q. Will you take the stand again, please? Have you seen and examined the defendants' log kept on the exploration in the Cal Bay well?

A. Yes, sir.

Q. Have you seen and examined the mud reports that were made and returned here by the Baroid people?

A. Yes.

Q. And the Johnston formation test reports?

A. Yes.

Q. Are you familiar with the prices at which acreage for the exploration of gas and oil has been bought and sold in northern California?

Mr. Scampini: May it please the Court, we object to the question on the ground that it is asking

(Testimony of H. K. Armstrong.)

for something that is irrelevant to the issue. We are not asking for acreage; we are asking for the value of leasehold estates as the value of acreage would not be determinative of the value of leasehold estates or royalty interests.

The Court: It would be the greater including the lesser, would it not?

Mr. Scampini: I do not know of any sales of acreage. We are talking of the sale and purchase of leases on acreage.

Mr. Bourquin: They split it up. They are talking about all the mineral fee in these properties. We propose to prove the value of the mineral fee, although because it has been [900] the style of the defendants' examination, we will allocate it between the lease and the fee.

The Court: I will overrule the objection.

Q. (By Mr. Bourquin): Are you familiar with it?

A. Yes, I am.

Q. Have you made a study and an examination of it additionally for the purposes of appraising this matter?

A. Yes.

Q. While the subject occurs to me, did you hear the valuation witness produced by the defendants, Mr. Wents, and the other gentleman, refer to three or four examples of properties in southern California which they used to support their claim of value here?

A. Yes.

Q. Did you identify them? Do you know the location of those properties?

A. Yes, I am quite familiar with them.

(Testimony of H. K. Armstrong.)

Q. Can you tell us, are any of them proved or unproved acreages or places?

A. They are all located in or near producing oil land.

Q. Mr. Armstrong, I want to ask you what in your opinion was the market value as of January 15, 1945—before I come to that, your Honor, we have a diagram that will be of assistance in presenting this matter. I would like to put it in evidence.

The Court: I think maybe we had better defer this until after the noon recess. We will take the noon recess at this time, ladies and gentlemen. The Court will reconvene at two [901] o'clock. I will ask you to bear in mind as usual the admonition of the Court.

(Thereupon a recess was taken until two o'clock p.m.)

Afternoon Session, February 5, 1947, 2 P. M.

The Clerk: United States of America vs. Certain Land in Contra Costa County.

Mr. Bourquin: Shall I proceed?

The Court: Yes.

H. K. ARMSTRONG

recalled; previously sworn.

Direct Examination

(Resumed)

By Mr. Bourquin:

Q. Mr. Armstrong, before leaving the map that you prepared there do you know the experience of

(Testimony of H. K. Armstrong.)

the various explorations shown on the map that you have made and produced here in the way of showings encountered and the prices paid for leasing rights in those properties?

A. A good many of them, yes.

Q. Would you take the pointer and give us the benefit of what you learned in that experience?

Mr. Scampini: May it please the Court, we object to the question on the ground it is not a matter of, or not a subject of expert testimony as to what the experience may be in connection with some of the fields discovered, and thereafter what happened to them. It has not any bearing on the value.

The Court: I think what counsel is doing is to show the information the witness acquired upon which to base his valuation. [902]

Mr. Bourquin: It is, your Honor.

The Court: I think that is a perfectly proper field of inquiry.

The Witness: In the vicinity of the Faria well and further to the southeast the Standard Oil Company took a lease on the Keller Ranch, consisting of about 1600 acres, for which it paid, I believe \$2500; that is a dollar and a half an acre. On that they drilled a dry hole, known as Kellar No. 1. This lease on the ranch covered what seemed to be the most favorable portion of the area involved, and it was a single lease, and was better drilling operations.

In other places, such as the Sites area, Sites is a town not far from Willows, west of Willows,

(Testimony of H. K. Armstrong.)

a few miles west in the foothills. There the Continental Oil Company drilled a well which blew out something like 20,000,000 cubic feet, and they went to salt water, and cratered; the gas and mud and water came out for 2000 feet all around the well. At that well you can still see gas and water bubbling up. That land belonged to the Peterson family, the land upon which the well is located, and the adjacent land, and Peterson told me they would lease that land for a dollar an acre now.

Mr. Scampini: I move to strike out the statement of the witness as to what Mr. Peterson told him, and move to strike out the entire testimony of the witness on the ground that [903] it is hearsay; what he has been told by a landowner by way of a bonus for obtaining the rights on the property. I think it could not have any bearing on the market value of a leasehold estate in the course of barter and sale between persons in order to obtain a lease. That is not a criterion of the value of the land on which the exploration and drilling——

The Court: Isn't it some argument of the value of the lease?

Mr. Scampini: It is evidence only as to bonus paid by the company, in addition to the royalty reserved by the lessor for the purpose of obtaining that lease.

The Court: I will overrule the objection.

Q. (By Mr. Bourquin): You say on that property, Mr. Armstrong, that after the drilling of the well that blew out the property was leased for a dollar an acre.

(Testimony of H. K. Armstrong.)

Mr. Scampini: May it please the Court, there was no such statement made as that. I object to the form of the question as leading and suggestive.

The Court: I understood him to say the owner informed him they received a dollar an acre.

Mr. Scampini: Plus a royalty, your Honor. Let's find out what the value of the royalty is.

The Court: I don't think counsel can do it all in one question. Overrule the objection.

The Witness: The Petersons received a one-eighth royalty. [904] The lease provided they would receive one-eighth royalty of anything produced there.

Further south and within the area in this map there is an area, Nigger Heaven Dome, and that was something that was very prominent on the west side of the valley, not far west of Woodland. In approximately 1931 the Getty Oil Company commenced drilling a well there and at 2000 feet in depth experienced a great blow-out and gas and mud cratered up about the well and flowed on the surface of the ground for maybe a thousand feet on all sides.

Mr. Scampini: Will it be deemed part of the record that we except to all this line of testimony, so we won't have to be getting up and repeatedly objecting?

The Court: If you will make clear to me what you have in mind, I don't quite follow you as to the materiality. What other properties in the neigh-

(Testimony of H. K. Armstrong.)

borhood have been sold for is always a proper subject in condemnation, as long as it is proximate in point of time and location.

Mr. Scampini: (After argument): In order the record will be clear, we will object to the testimony given in the answer by the witness, and move to strike it out on the ground he is not dealing in comparable properties, on the ground he is basing his replies clearly on hearsay testimony; on the ground he was not present, knows nothing of the facts personally, and what has happened to the fields after coming in, or otherwise, [905] because they were subsequently abandoned, has no bearing on the question of value of a leasehold interest of Cal Bay Corporation, or Joseph Faria, at the time of the condemnation by the Government.

The Court: Well, on the ground comparable transactions involving mineral rights in this general area are proper to be presented in connection with testimony as to value, I will overrule the objection.

Mr. Bourquin: Will you proceed?

A. Following the blow-out——

Mr. Scampini: We ask the examination of this witness proceed by question and answer.

Mr. Bourquin: I asked him if he will detail for us what information he has pertaining to the explorations in the area shown on the map, with reference to showings encountered in the explorations, and the prices paid.

The Court: I think that is a fair question. I will overrule the objection. I don't know how else

(Testimony of H. K. Armstrong.)

we could ascertain it. We cannot shut out the testimony that gives information to the jury as to what took place in land around here. How can we do that? Overrule the objection.

The Witness: Following this blow-out that I refer to at Nigger Heaven Dome, Leebo No. 1 well, the Getty Oil Company ceased their activities there, and the drilling of the well was taken over by another company. I was engaged by the [906] Reserve Oil & Gas Company, who had leases in those areas, to watch the progress of that well, and advise them regarding the procedure. The well was during the following year, or year and a half, drilled to a depth of approximately 6700 feet. During that drilling they encountered a good many shows of gas, scum of oil, in many instances, and from time to time the pressure was such that mud would flow from the well and simulate a blow-out; not as great as the initial one at 2000 feet, but expressed quite a pressure. When the well was shut in they used a pressure as I recall, 1700 pounds on the casing, to make the casing. When the valve was opened up the pressure was built up and there was no volume of gas recorded. The well was abandoned and later the Standard Oil Company drilled a well nearby, which was also a dry hole, and it was abandoned.

After the completion of the Leebo well and the drilling of another well by Standard Oil Company, some of the Reserve Oil & Gas Company's holdings were abandoned at a dollar an acre, with royalty $\frac{1}{8}$.

Q. Including the well?

(Testimony of H. K. Armstrong.)

Mr. Scampini: We object to that as leading and suggestive.

The Court: Overruled.

The Witness: The well was—the Northern Counties Oil & Gas Company I think, was the name; the name of the company, the lease I referred to sold by the Reserve Oil & Gas Company, they were nearer this well, and in the top of the structure.[907]

In the area between Rio Vista and Kirby Hills there was a wildcat play. That line played out and I might say my experience that started in 1933 developing and drilling the Leebo well, has continued in this area at irregular intervals.

Q. What do you mean by “play”?

A. I mean a company decides to lease some of the land and try some exploration; other companies getting word of that company's activities go in and lease land on their own right. The idea is if the Standard Oil Company were to drill a well there, as they did, they would have adjacent acreage, and if the well made a discovery the cost to them would only be the land cost, no well cost. It is play, it is not an investment, it is entirely speculative.

At that time leases in that area which sold initially for a dollar an acre, finally got up to \$5 an acre, then \$10 an acre. Then I believe there was one 60-acre piece which sold for \$30 an acre. One landowner told me he got \$75 an acre. I think he was exaggerating it to his neighbor, because the man that leased paid only \$30 an acre for it.

(Testimony of H. K. Armstrong.)

That play having been completed, and all the leases having been obtained that could be obtained in there, the Standard Oil Company then drilled their Montezuma Community No. 1, which was a dry hole.

About that same time that the well was drilled in there by a man by the name of Oberholtz, I happened to know the history [908] on that because I was engineer. The leases were obtained from Mr. Robert Landi for a dollar an acre.

Earlier than this, and on the east side of the valley, in the vicinity of Lodi and Barton, there was another lease play. One of the companies, Amerada, in conjunction with the Bank Line Oil Company and Honolulu Oil Company, had been exploring that area by geophysical means. They took leases there in competition with each other, and the price which started at a dollar an acre was soon up to \$10 an acre. There were some even at \$20 an acre. The wells were drilled. They were found to be dry holes, and they were abandoned. The field turned out to be very small. Subsequent inquiry about the development occurring at Thornton and around there, the activities were limited to a very small acreage and leases offered at \$5 an acre.

Mr. Scampini: I move to strike that out as not responsive.

The Court: Overruled.

The Witness: Across the river from the valley area near the town of Fairfield there is a structure,

(Testimony of H. K. Armstrong.)

well known structure known as the Maka. That is on the map. It has been mapped by many geologists. It is very well exposed. There is a fault in one side of it. There is a volume of gas that comes up through the stream that crosses the roof of the structure. The leases covering that structure were held by the Western Gulf Oil Company for ten years, during which time they paid \$1 an acre rental, and following their quitclaiming of that without drilling the Union Oil Company held it for about, I think, five [909] years for something like a dollar an acre a year, and following that I was engaged, myself, to make a geological survey of it and make a report on it to an independent broker, who then went to the landowners and obtained leases from them for nothing. Since that time he has failed to dispose of the leases, although he is offering them at a dollar and a quarter an acre.

Q. What was the experience in Potrero Hills?

A. Potrero Hills is a prominent field over in the midst of the mud flats south of Fairfield, and north of the Faria property. It was first explored, I think, in about 1919 by the Honolulu Oil Company. They drilled a well there, I think, and about 1900 feet, and it blew out and they subsequently abandoned, and the Richfield Oil Company, in about 1929 or '30 secured leases on the land and drilled a number of wells, drilled three wells, I believe. I did not get the details of the particular wells, but it seems to me it is sufficient after having

(Testimony of H. K. Armstrong.)

gotten maybe 25,000,000 feet a day they finally, after drilling three wells, quitclaimed on the lease, and I believe the land stands under lease now.

When I have been telling you about Sites, Nigger Heaven, and Potrero, they are all cretaceous structures, Maka is a cretaceous structure. The area between Kirby Hills and Rio Vista has a cover of alluvium, and the cretaceous is buried by a great thickness of eocene.

At the end of Potrero Hills last year many leases were [910] taken by a man by the name of Woodward, and then the National Company drilled a well. They drilled about 2000 feet. I think when they were 1700 feet it blew out. I visited the well shortly after and observed gas and mud and salt water, and I conversed with the people there as to what had happened. They showed me the Schlumberger and asked me about it. That has been abandoned now; Woodward bought the leases there for a dollar and a half an acre.

Q. (By Mr. Bourquin): Let me ask you this, in addition to the consulting work in your experience, Mr. Armstrong, have you done or had charge of any development in the areas there?

A. Yes. I have been employed in the last six or seven years by Peter Cook, Jr., and we had operations in Rio Vista and the Cache area. I had charge of the drilling of a number of wells, five or six, for him, and I have also had charge of drilling of four or five wildcat wells that I did not develop, which resulted in dry holes. I have also

(Testimony of H. K. Armstrong.)

been engaged with others, one of them Lecha McNee, and the second well which I referred to before as the Oberholtzer, I was geologist and engineer with them. The last two wells I mentioned lie in the area between Rio Vista and Potrero Hills.

Mr. Bourquin: It would facilitate presentation of the appraisals, I think, if we used this map here. I will show it to counsel. We have here, your Honor, for the purpose of presenting the witness' appraisals an appraisal map here that [911] I would like to offer for that purpose, and have it marked so it can be used. There is a legend there, Mr. Scampini, I did not show it to you, but I think it has reference merely to the different ownerships.

Mr. Scampini: Very well; subject to check as to correctness of the legend, we have no objection.

Mr. Bourquin: We will offer it in evidence.

The Court: Very well.

(The map was marked Plaintiff's Exhibit Z.)

Mr. Scampini: Will it be stipulated, counsel, that the large section of colored light blue represents all of the land taken by the Navy pursuant to this action, comprising all of the parcels involved in the 5400 some odd acres of land, and the only parts we are interested in are the properties of the Cal Bay and of Joseph Faria, Jr.

Mr. Bourquin: I believe that is right. The adjacent area, which is colored light blue, is the total fifty-four hundred some odd acres. With respect to what is colored green and yellow, that

(Testimony of H. K. Armstrong.)

represents the portion taken from the defendants. I don't think—it does not have the piece of Joseph Chavez.

Mr. Scampini: For the purpose of the record at this time we will abandon any claim as to the value of the Chavez piece.

Mr. Bourquin: I understand now that Mr. Chavez is satisfied with the compensation paid him by the Government for his [912] property taken, and makes no claim therefor.

Mr. Scampini: Mr. Chavez is not a party to this suit.

Mr. Bourquin: That's right. The piece was not included, so we should understand Mr. Chavez is not making a claim.

Mr. Scampini: No. Joseph Faria is not making any claim as to his lease in respect to the Chavez piece.

Mr. Bourquin: All right.

Mr. Scampini: That is Parcel 71, your Honor. We are only interested with Parcel 57, 58, 59, 64 and the Alvernaz piece, which appears at the northeast corner of the Cal Bay property.

Q. (By Mr. Bourquin): Mr. Armstrong, the diagram placed last in evidence, is it correct to say that the Cal Bay Lease, including both the portion taken by the Government and the balance of the lease outside of the Arsenal is shown in the area shaded and outlined in green? A. I believe so.

Q. And the shaded yellow lines include the portion of that taken and the balance outside of that

(Testimony of H. K. Armstrong.)

Arsenal not taken is shown in the area shaded yellow and outlined in yellow? A. Correct.

Q. Will you tell us what, in your opinion, was the fair market value as of January 15, 1945, of the whole total mineral rights inclusive of both lease and royalty in the 208.83 acres in parcel 59; that was the property of Mary Faria, and covered by the Cal Bay lease. A. \$1470. [913]

Q. \$1470? A. Right.

Q. How much an acre, Mr. Armstrong?

A. \$7 an acre.

Q. \$7 per acre. Can you allocate that as between the market value of that lease and the market value of the royalty reserved under the said lease?

A. Yes. In my opinion, the royalty or lessor's interest is worth \$1050.

Q. \$1050? A. Or \$5 per acre.

Q. Or \$5 per acre.

A. The lessee's interest was worth \$420, or \$2 an acre.

Q. Now, going next to Parcel 58, which is shown in the green, and lies inside of that portion of 59 taken, consisting of five acres, I will ask you what, in your opinion, was the fair market value of the total mineral rights as of January 15, 1945, of that parcel which was the property of whom——

Mr. Scampini: Edward Faria.

Mr. Bourquin: Edward Faria, and subject to the Cal Bay Lease.

A. In my opinion that was worth \$35.

Q. How much? A. \$35: \$7 an acre.

(Testimony of H. K. Armstrong.)

Q. What, in your opinion, is the allocation between the market value of the lease interest and the royalty interest in that property?

A. Royalty interest of \$25; lessee's interest \$10.

Q. Going to Parcel No. 57, which was the property of Mae Roche, consisting of something less than approximately 5 acres of property, as shown on the diagram inside the Faria lease [914] as Parcel 57, what, in your opinion, was the fair market value of the total mineral rights in that parcel of land as of January 15, 1945?

A. \$35.

Q. \$35. What, in your opinion, are the respective market values of the lessee's interest and royalty interest in that parcel?

A. Lessee's interest \$10; lessor's interest, \$25.

Q. In parcel 59, that was covered by the Joseph Faria lease and consisted of 63.91 acres included in the taking of the Government, I will ask you what, in your opinion, was the fair market value of the total mineral interest in that acreage subject to Joseph Faria's lease as of July 24, 1944? Will you wait just a minute, please, before you answer? Can you answer that, Mr. Armstrong?

A. \$640.

Q. \$640. What, in your opinion, are the respective market values therein of the lessee's interest of Joseph Faria, and the royalty interest reserved to Mary Faria?

A. Each \$320, or \$5 per acre.

Q. Each \$320. On that, of course, the total

(Testimony of H. K. Armstrong.)

mineral interest runs out at approximately \$10 an acre, does it? A. Approximately.

Q. What, in your opinion, was the fair market value of the .65 acres contained in Parcel 64, and taken by the Government, what is the value, the total mineral interest value of that fraction of an acre as of July 24, 1944? A. \$10.

Q. \$10. Now, in your opinion, would the market value [915] of the lease and the royalty in that fraction of an acre be allocated?

A. Divided equally, \$5 to each.

Q. What, in your opinion, was the fair market value of the total mineral interest—that is the Joe Chavez piece I was coming to, and that has been abandoned.

Mr. Armstrong, will you just state for us the reasons and the basis for the conclusions of market value which you have stated?

A. The basis of my opinion is a comparison between the characteristics of the subject land and other gas lands in Central and Northern California, the prices for which they have been traded, in conjunction with the physical facts which can be learned from studies of the log, the physical log and the history of the field at the Division of Gas and Oil, the daily log of the oil, the Schlumberger record, the mud engineer's record, the Johnston formation testor records. [916]

Some knowledge of the geology as it exists on the surface; inspection of some of the cores of the well at the well that I made personally; and exi-

(Testimony of H. K. Armstrong.)

dence derived from the study of similar records from many other exploratory wells nearby, such as the Kellar well, and lying some distance away, such as the wells at Rio Vista, Honker Bay, Kirby Hills and Suisun.

Q. Let me ask you this: Did the presence of this well add anything to the value of the mineral fee of the 208.83 acres of land in Parcel 59 taken, in your opinion? A. No.

Q. Will you tell us why, please?

A. The well was in bad mechanical condition, for one thing. There was a fish in the straight hole and that fish obstructed the casing that had been set in the hole. A second hole had been drilled through a window, and that hole was obstructed with another fish. The casing necessitated any further drilling to be in a small hole, a six and a quarter inch hole, as the side track well was, which is an undesirable mechanical condition, and then perhaps more importantly, the well had penetrated all of the geologic formation beds which have a history of producing commercial gas and had been tested exhaustively in the eocene beds and found no commercial production.

The showings found subsequently in the Cretaceous formation below, in the slanting hole, were to my mind no more [917] significant of commercial discovery than many of these blowouts that I have referred to before now. It was a showing of gas, and that is a common thing to encounter—salt water with it in all probability. That is a common

(Testimony of H. K. Armstrong.)

thing to encounter. The history of the well was definitely negative. No discovery seems to have been made of any importance, in my opinion.

Q. Based upon your experience, would a purchaser of the lease in that property who wanted to take a further look utilize that well in the condition it was on January 15, 1945? A. No.

Q. Why?

A. In my opinion, to a prudent operator, having had the experience of the industry, an old junked hole is a liability. He had better start another one from the surface and have the mechanical conditions right.

Q. I take it in giving us your view with respect to the presence and condition of the well, that you are not including in this taking the equipment, the rig or any of the equipment that could be and, of course, was removed? A. No, sir.

Q. Let me ask you these questions on severance, Mr. Armstrong, if you please: Will you tell us in your opinion to what extent, if any, was the property under the Cal Bay lease in the taking and consisting of the 158 acres of Mary Faria, depreciated in market value by the taking of the Government of the property that was taken?

A. In my opinion it suffered [918] no damage.

Q. Will you tell us your reason for that opinion?

A. There is a substantial amount of acreage that is outlined in green on this exhibit which lay outside the Government taking.

Q. That is the one outlined in green, but not shaded in, is that right?

(Testimony of H. K. Armstrong.)

A. Not solid green, but outlined in green.

Q. Yes.

A. Which would give a lessee abundant opportunity to locate wells and drill them to whatever horizon he saw fit to do it. He would have possibly some advantage in that the other land was in the hands of the Government and he would not expect very keen competition.

Q. What is your opinion with respect to that question as referred to the 310 acres of Alvernaz, which was included in the Cal Bay lease and was not included in the Government taking, and showing in that oblong shape at the northerly limits of the Cal Bay lease? Was that property depreciated in market value by the taking of the Government? A. I think not, for the same reasons.

Q. To what extent, if any, was the property covered by the Joseph Faria lease and consisting of the 9.6 acres of Mary Faria and the 227.96 acres of Geraldine Faria which were not included in the taking depreciated in market value by the Government taking?

A. In my opinion, they did not depreciate in value. [919]

Q. And for any other reason, or the same reason that you mentioned? A. The same reason.

Q. To what extent, may I ask, was the royalty interest of Mary Faria in the 158 acres of her property covered by the Cal Bay lease that was not taken depreciated in value by the taking of the Government? A. I think not.

(Testimony of H. K. Armstrong.)

Q. No depreciation?

A. No depreciation in value occurred.

Q. What about the royalty interest in the 9.6 acres covered by the Joseph Faria lease, but not included in the taking? Did that in your opinion suffer any depreciation in market value?

A. No, in my opinion it was not adversely affected.

Mr. Bourquin: You may cross-examine.

Cross-Examination

By Mr. Scampini:

Q. Mr. Armstrong, how many dry holes did you drill for Peter Cook in the Rio Vista area outlined by you on your map? A. None.

Q. Calling your attention to the outlines of the Rio Vista field that I am now tracing, can you state how many dry holes have been drilled within the confines of the red?

A. I am not quite certain, but I think there was one. It may be that that was subsequently made into a producer.

Q. Isn't it a fact that there are more than five dry holes right within the confines of the red—and I will point them [920] out to you? What is that well that I am now indicating?

A. Well, I can't tell from this scale map? My guess is it is one of the Alvarado holes.

Q. A dry hole or producer?

A. A dry hole in the lower zone.

(Testimony of H. K. Armstrong.)

Q. How about the well I am now indicating?

A. I do not know which well that is.

Q. Does that appear to be a dry hole on the map? A. I can't say. I don't know.

Q. How about the well I am now indicating?

A. The same. I don't know.

Q. How about the well I am now indicating?

A. I don't know which one you are indicating.

Q. Right here (indicating).

A. I don't know that hole.

Q. How many more such similar wells within the confines of that red boundary would you locate by looking at that map?

A. There are many of them.

Q. Many of them?

A. Many wells which are dry in the lower zone produce in the upper zone.

Q. There are many dry holes which are surrounded by producing wells, are there not?

A. Not so far as I know in that field.

Q. It happens quite often in many fields, doesn't it?

A. It is a rare thing. It can happen, but it is rare.

Q. I notice here on the map prepared by you that you have circled in black the well drilled by Standard Oil on Mulligan [921] Hill, known in this case as the Kellar well, and I take it that that means it is a dry hole, is that right?

A. Yes, the symbol for a dry hole is a small circle. Some of them have been emphasized by a heavy large circle.

(Testimony of H. K. Armstrong.)

Q. In respect to the Cal Bay well, is that symbol that you have there also indicative of a dry hole?

A. Yes.

Q. So that your entire valuation that you have given is based upon your assertion that the Cal Bay well resulted in a dry hole? A. That is right.

Q. And if it were a fact that it was a producing well at the zones penetrated in November of 1944, would those values which you have given still be the same? A. Certainly not.

Q. How much higher would they be per acre on Parcel 69?

A. How much better was the well under your question, may I ask?

Q. I beg your pardon?

A. I ask you how much higher the value that you have given——

The Court: The witness says it would depend upon how much better the well was.

Mr. Scampini: Very well. I didn't understand.

Q. In the course of your studies for the forming of your opinion that this is a dry well, the Cal Bay well, did you rely entirely upon the findings of Professor Taliaferro? A. Oh, no.

Q. What other findings or facts did you have before you that [922] led you to the conclusion that it was a dry hole?

A. The log record, daily log sheets, the summary log, the testimony that I heard here in this courtroom.

Q. Where did you see the log record of the well?

(Testimony of H. K. Armstrong.)

A. I think I was supplied with a copy of that by the Department of Justice.

Q. Did you see on the last page of the log of the well a note reading as follows:

“This well has undoubtedly made a gas and oil discovery, but the completion of the well as a commercial producer could not be effected, as over one-half of the leased lands of Cal Bay Corporation, including the well, was condemned by the United States Government for use of the Navy as part of the lands to be incorporated in the Port Chicago ammunition storage area in accordance with previous notices.”

Did you see that notation on the log?

A. Yes, sir.

The Court: Just a moment, Counsel. Is that something that the California Oil and Gas people put on there?

Mr. Scampini: No, that is something that appears on the log of the Cal Bay well.

The Court: You mean something that the Cal Bay people put on there?

Mr. Scampini: Yes. That is the log he examined.

Q. Did you pay no attention to that note on the log of the well? [923]

Mr. Bourquin: That is the log summary.

The Court: Obviously he did not, because he said it was not worth anything.

Mr. Scampini: I am approaching the reasons as to why he did not.

(Testimony of H. K. Armstrong.)

Q. Did you pay no attention to the note on the log of the well? A. I wouldn't say—

Mr. Bourquin: I object to that, your Honor, as argumentative and assuming something not in evidence, because that is not the log. That is the summary that Mr. Faria said Mr. Wents wrote and he signed it.

The Court: I think it is an argumentative question. You are asking the witness whether he agreed with the conclusion the Cal Bay people came to and he says he does not. He told you that already.

Q. (By Mr. Scampini): Did you examine the log record of the well for November 29, 1944?

A. For that day?

Q. Yes. A. Yes, I did.

Q. You gave it no consideration in arriving at your value, is that right?

A. On the contrary, I scrutinized that and the events leading up to the events of that day very carefully to arrive at the opinion I expressed.

Q. Did you arrive at the opinion that the well was a non-producer? A. Definitely.

Q. By reason of what you saw on the log record?

A. By reason [924] of the fact that it does not produce.

Q. Do you know whether or not the lower formations were ever tested to ascertain whether or not they would produce?

A. No, I do not believe they were.

Q. Do you know why they were not tested?

A. No. That is a mystery to me, why the tests were not made.

(Testimony of H. K. Armstrong.)

Q. Is your valuation based on the assumption that the lower formations penetrated in November of 1944 were found to be non-productive?

A. I can't answer that question yes or no. Is that what you wish me to do?

Q. I wish you would and then you may explain if you wish.

A. May I have that question again?

(Question read.)

A. No.

Q. What is it based on?

A. And then if I may explain——

Q. Go ahead.

A. I noted showings that the log records and the various witness told us about, and it appeared to me that there was an uncertainty. The thing was still speculative, and I so regarded it in arriving at my estimate of the market value of the property.

Q. Did you for the purpose of determining the probability of discovery in the Cal Bay well see fit to obtain the information collected by Byron Norris in the course of drilling the well? A. Yes.

Q. Did you discuss it with Mr. Norris?

A. No, I did not. [925]

Q. What information supplied to you by Mr. Norris or from Mr. Norris did you consider?

A. I read his various reports. I was a little bit surprised in the beginning that he made some of the statements he did, but he later corrected them, and I finally arrived at the opinion, after perusing them carefully and studying his map, that there was nothing very useful there to me.

(Testimony of H. K. Armstrong.)

Q. Do you disagree with the opinion of Mr. Norris that the well made a commercial discovery in the Martinez sand at the 4,975 foot level?

A. Yes.

Q. And your valuation is predicated upon your opinion as to whether or not a commercial discovery was made in the sand, is that right?

A. No, sir.

Q. Upon what other factors is it predicated?

A. It is based upon my estimate of what the industry would appraise a situation of this sort at, what a buyer and a seller would consider when they are talking a trade. Personally I would not recommend that to anybody. These prices I have quoted are not my estimate of the value I would pay for it or that I would recommend a client pay for it. They are merely my estimate of what in the market and in the selling of oil leases and royalties these would bring between a willing buyer and a willing seller.

Q. What information would this supposed willing buyer have to have to have before he could arrive at an opinion as to what [926] he would pay for the leasehold estate of Cal Bay Corporation?

A. He should have the facts made available to him.

Q. Were all the facts available to you before you formed the opinion which you reached?

A. All the facts I found were available to me.

Q. Did you discuss it with any of the drillers who operated or drilled the well?

A. No, I did not.

(Testimony of H. K. Armstrong.)

Q. Did you go down to discuss your opinions or your views with Mr. Norris? A. I did not.

Q. Did you discuss it with Mr. de l'Eau?

A. I did not.

Q. Did you discuss it with Professor Taliaferro?

A. I discussed geology with him.

Q. Do you agree with Professor Taliaferro as to geology?

A. Yes, sir, I think he has made a very excellent map there.

Q. Do you disagree with the geology of Byron Norris as to the geology of this structure?

A. So far as I have examined it, there is very little similarity observable between the facts in the field and the map that Mr. Norris puts his name to,

Q. Did you say similarity or dissimilarity?

A. Very little similarity.

Q. Do you mean to state that Byron Norris has produced a map which does not correspond with the facts? A. So far as I have observed, yes.

Q. Where on the map of Byron Norris do you find dissimilarity [927] with the structure as you observed it?

A. In the very critical southwest dips they are absent.

Q. Did you go to where the well had been located to ascertain whether or not any dips were visible there? A. Yes.

Q. Did you find an anticline on the property or in the vicinity of the Cal Bay well?

A. No, no anticline.

Q. Do you disagree with Professor Taliaferro

(Testimony of H. K. Armstrong.)

that there is an indication of an anticline about twenty-five hundred feet to the northwest of the well?

A. There is an indication. When you speak of anticline I think of one that has commercial attractiveness. That one has merely a vestige of geologic interest. It has no commercial attractiveness.

Q. Did you recommend to the Reserve Oil and Gas Company to drill the well of Nigger Heaven Dome? A. I did not.

Q. Do you know what the Reserve Oil and Gas paid for the leases obtained by them on the Nigger Heaven Dome? A. I do not.

Q. Do *you* *what* the Reserve Oil and Gas refused to sell those leases for before they abandoned them? At what price they refused to sell them?

A. I do not.

Mr. Bourquin: Did you say before they abandoned them?

Mr. Scampini: Before the well was drilled.

Q. In all the incidents of transactions that you have given us, is it not a fact that you were dealing with propositions involving the obtainment of leases by lease scouts or major [928] companies from land-owners such as farmers, and you were not dealing with the actual purchase and sale of leaseholds or royalty interests as such?

A. I don't understand your question.

Mr. Scampini: Will you read it, Mr. Reporter?

(Question read.)

The Court: I think that is rather confusing. I do not understand what you mean by that either.

(Testimony of H. K. Armstrong.)

Mr. Scampini: Very well, I will reframe the question, your Honor.

Q. You have testified to certain transactions involving the taking of leases in and about this territory at anywhere from \$1.00 to as high as \$30 an acre. Calling your attention to the transaction that you said brought as high as \$30 an acre, would you please state whether or not that was a \$30 per acre bonus paid to the landowner plus the usual royalty as a consideration for obtaining a lease?

A. It was paid to the landowner.

Q. Have you any knowledge of any transaction, after a lease has been obtained in the fashion that you have testified, where the lease was thereafter sold by the person to someone else who had knowledge of the situation? A. Yes.

Q. Please state the transaction.

A. I am not at liberty to do so. This was information that came to me as a consultant with a client, and it is a matter of negotiation at the present [929] moment, and I am not at liberty to do anything about it.

Q. I will not encroach upon your confidence. I only ask you this question: Do you know of any transactions involving the sale of royalty interests by a landowner, knowing the land within the Rio Vista field, within the last two years?

A. That would be 1944 and 1945?

Q. Yes. A. Or 1945 and 1946?

Q. Or thereabouts—1944, 1945 and 1946?

A. Yes, I am familiar with a number of them.

Q. At what price per acre per cent did the roy-

(Testimony of H. K. ARMSTRONG.)

ality interest of the landowner owning the land in the Rio Vista field sell in the transaction concerning which you say you know?

A. I can't recall the figures, no.

Q. Would it run into hundreds of dollars per acre? A. I do not recall the figures.

Q. Would it run as high as a thousand dollars per acre?

A. I still do not recall the figures. As a matter of fact, I have no occasion to refer to those data, because the situation there is so dissimilar from the Faria situation that I did not refresh my memory as to those prices.

Q. The only reason why you think it is dissimilar, however, is because you have concluded that the Cal Bay well was a dry hole, isn't that true?

A. No, sir.

Q. That is the basis of your valuation though, isn't it?

A. It is a partial statement of the basis. [930]

Q. (By the Court): These wells in the Rio Vista district that you are talking about are producing wells?

A. (By the Witness): They are very large producing wells, your Honor.

Q. (By the Court): You are talking about a landowner's interest in those wells?

A. (By the Witness): Who has a current income from them.

Q. (By Mr. Scampini): Mr. Armstrong, did you collaborate with Paul Paine in the publication of a book entitled "Oil Property Valuation,"

(Testimony of H. K. Armstrong.)

printed in August of 1942? A. No.

Q. Have you read the book? A. Yes.

Q. I note here a statement to the effect as follows:

“And thanks should be recorded here to H. K. Armstrong, Ernest K. Parks and Robert Moore, who have done much to improve the original manuscript of this book.”

Did you have anything to do with preparing or improving the manuscript of the book?

A. I think that was just a great statement on the part of Mr. Paine in acknowledgment of discussions we had had regarding the matters of which the book treats.

Q. You have read the book since it came out, have you not? A. Many times.

Q. Generally speaking, it is considered to be a reliable textbook on oil property valuation, is it not?

A. It is regarded very highly. [931]

Q. And you do not disagree with any of the statements found in this book, do you?

Mr. Bourquin: That is an omnibus question, your Honor. I object.

The Court: I do not wonder that the witness was stopped by that question.

Mr. Scampini: It is in the class of “Have you stopped beating your wife yet?”

The Witness: I would not be human if I did not disagree with some of them.

Mr. Scampini: Let us go over it statement by statement then, and we will bring it into focus with the subject of this examination.

(Testimony of H. K. Armstrong.)

Mr. Bourquin: May I suggest this: Mr. Paine is going to testify. Do you think it is necessary to review this with Mr. Armstrong? If you want to let it rest you can review it with Mr. Paine.

Mr. Scampini: I would prefer to review a statement here with Mr. Armstrong and then go on to something else.

Mr. Bourquin: Your Honor, I am not satisfied that this is a proper basis of cross-examination.

The Court: I am not either.

Mr. Bourquin: I am going to object to it.

The Court: I think it is going pretty far afield. This is merely testimony as to the value of the property. If it [932] is legitimately within the field of cross-examination, of course, it should be allowed.

Mr. Scampini: It is for the purpose of testing the witness' knowledge of the formula for valuing unproved land. He says this was on unproved land.

Mr. Bourquin: But to this witness, the Court and the jury, this book is hearsay. If Mr. Paine was on the stand it would be admissible, or if Mr. Armstrong said, "I based my opinion on what I read in Mr. Paine's book," it would be admissible.

The Court: You can ask him on what facts he based his opinion, but whether he agrees with what someone else said should be the method of appraising would not be proper cross-examination, because that would get into an endless field of cross-examination, and I do not think I would want to permit that. It would be confusing to the jury. Your opponent could bring in ten other books and ask the

(Testimony of H. K. Armstrong.)

witness if he agreed with what somebody else said on the subject. It is not a basis of examination of a witness.

Mr. Scampini: Has your Honor ruled?

The Court: You ask a question and then I will rule.

Q. (By Mr. Scampini): Do you agree with the statement found in Mr. Paine's book reading to the following fact at page 53, dealing with royalties on unproved lands:

"In California with the same outlook—" that is to [933] say unproven—"royalties will be dealt in at \$4 to \$8 per acre per cent, equivalent to \$50 to \$100 a royalty acre."

The Court: If there is an objection to that I will sustain it, because it is very obvious that no one could tell what the man was referring to in the book. You are going to ask the witness to refer to a statement that somebody else made without having the full context? I sustain the objection. I regard that as far beyond the limits of cross-examination.

Q. (By Mr. Scampini): Have you valued the unproved mineral rights of the Kern County Land Company for the purpose of issuing securities to the public in 1939? A. No.

Q. Did you do it for Dean Witter and Company?

A. I reported a number of times to Dean Witter on my opinion of the market value of the Kern County Land Company oil properties.

(Testimony of H. K. Armstrong.)

Q. Did you prepare an estimate of the Kern County Land Company future royalty oil income earnings as of November 1, 1939, for the benefit of Dean Witter and Company?

A. I made such a report to them.

Q. Did you not in that report classify all of the unproven and of the Kern County Land Company under the heading of Undetermined Possibilities at the sum of \$10,000,000?

The Court: Now, that is going to call for a discussion by this witness that might take days, for him to tell us why he made another appraisal in another case for \$10,000,000, involving huge properties, and I do not see that that is [934] pertinent to this examination, unless it has something to do with the properties that are in the neighborhood or are in proximity.

Mr. Scampini: If it please the Court, he has gathered together a series of acres of land upon which there was a single indication of oil or gas produceable therefrom, and he has valued that oil or gas possibility, which he even calls an undetermined possibility—not a near possibility—at \$10,000,000. On what basis would he value something that was not undetermined?

The Court: That is purely argumentative, Counsel, and far beyond the issues of this case. Any expert might have evaluated hundreds of other pieces of property, and unless we have the facts in each one of those cases and all the circumstances, you could not make a comparison. It would be an end-

(Testimony of H. K. Armstrong.)

less examination if the Court permitted that deal to be inquired into. I do not know whether there has been an objection, but the Court on its own motion would hold that that is beyond the scope of the examination. We will take the afternoon recess at this time. Please bear in mind the admonition of the Court.

(Recess.) [935]

The Court: You may proceed.

Q. (By Mr. Scampini): Mr. Armstrong, at the time that you made the valuations did you consider the property of Cal-Bay and of Joseph Faria, Jr., to be undeveloped land? A. Definitely.

Q. Did you consider it to have any possibilities for production of oil or gas?

A. Speculative value for gas, yes.

Q. Did you consider it to have reasonable possibilities of discovery of oil or gas on the property?

A. I don't know what you mean by "reasonable," Mr. Scampini. I might say that one well in twenty, one wildcat well in twenty, or one in one hundred, something in that range, succeeds in making a discovery, and I don't know "reasonable" lies within that wide range.

Q. Do you follow a formula for evaluating oil or gas rights in land offering only possibilities for development? A. No.

Q. Each valuation that you make, is it based upon an individual formula which you apply to a particular situation? A. No.

(Testimony of H. K. Armstrong.)

Q. Did you evaluate in 1939 the possibilities of discovery of oil or gas on the Wheeler Ridge structure near Bakersfield at the sum of \$750,000?

A. I assume you are referring to a report that I wrote to Dean Witter.

Q. Yes.

A. I don't recall the figures, but that may be right.

Q. Was there any development going on on the property at the time you gave it a value of \$750,000?

A. I can't recall. The report would show, I think. [936]

Q. Isn't it a fact that subsequent to the making of your valuation of \$750,000 on the possibility, the Shell Oil Company drilled Plieto No. 1 on the west end of Wheeler Ridge, and it turned out to be a dry hole?

A. I don't recall the date that well was drilled. I know a well was drilled there and it was on the westerly extent of Wheeler Ridge, and I recall that they worked down structure on a plunge to where it folded and was tight and irregular. It was a dry hole.

Q. Did it depreciate the value that you gave to the possibilities of the property for oil or gas by reason of the dry hole? A. I don't recall.

Q. What formula did you follow in evaluating that possibility at \$750,000?

A. Mr. Scampini, I do not have a formula. I try to put myself in the position of appraising the feeling of the industry about the speculative value

(Testimony of H. K. Armstrong.)

of such land, what a buyer and seller would agree to to make a trade on it. It cannot be dignified by calling it a formula.

Q. Do you know whether or not you felt it conservative to evaluate a possibility on an unproven structure for the Kern County Land Company at \$750,000?

A. I cannot understand that. I don't think that means to be conservative. I tried to make an estimate according to my best lights, neither being too optimistic or too pessimistic, and conservatism is not a merit, in my judgment.

Q. You made that valuation for the purpose of it being used for [937] the sale of stock by Dean Witter Company, did you not?

A. They did not inform me the purpose of it other than to say they would like to have a report written for their stockholders to bring them up to date on the development in that property, and at the same time asked me to render to them a weekly or monthly statement of developments as they occurred on the Kern County Land Company land.

Q. Mr. Armstrong, you said you did not recall the facts in connection with your valuation of the possibility of the Wheeler Ridge oil structure, and I will now show you report at page 59, your report at page 59, and you can look at it to refresh your memory, and then state whether or not you did not place a value of \$750,000 on that possibility.

A. That is not the way I understood your question. I thought you asked me what effect the dry hole had on this estimate. Am I wrong in that?

(Testimony of H. K. Armstrong.)

Q. First I asked you whether you based that valuation on that possibility.

A. That is correct, that is on November 1, 1939, I placed the value on the speculative possibilities to the Kern County Land Company of \$750,000 as attributable to that portion of their 400,000 acres of land in and around Wheeler Ridge, namely, about 8,000 to 10,000 acres of land.

Q. Did you attribute that value, a value over \$10,000,000, rather, to the speculative possibility of the entire four hundred thousand some odd acres of land in that same report?

A. I should like to explain it. I had made several other [938] reports on Kern County Land Company for Dean Witter, and more recent ones than this show—I cannot recall off-hand these figures.

Q. I will show you the page and you might refresh your memory, if I may, please. Page 63 of your report.

A. May I have the question again, please?

(The question was read by the reporter.)

The Witness: No.

Q. (Mr. Scampini): What value did you attribute to the speculative possibilities for the discovery of oil or gas on all of the undeveloped land of Kern County Land Company?

Mr. Bourquin: How much land, counsel?

The Court: 400,000 acres. What is that, about \$25 an acre?

The Witness: \$25 an acre.

The Court \$25 an acre times 400,000 makes ten million.

(Testimony of H. K. Armstrong.)

The Witness: That's right. My figure was \$7,500,000.

Q. (By Mr. Scampini): Was that figure of seven million not reduced by you subsequent to making the ten million dollar value?

A. That's right. It was presumably diminished when discoveries were made on the land to which I initially applied a ten million dollar figure, and as results came in and more quantities of oil were developed I diminished the productive value of the undrilled and unproved land and increased the value where the oil had been proven. [939]

Q. At the time you did allocate your value of ten million dollars, there were no indications at all of any production of oil or gas on that land, was there?

A. On the contrary.

Q. They could be only a possibility?

A. That's right, speculation, but it was a very definite oil land value that was attributable to these acres by virtue of the fact a number of very important oil faults added measurably to the California oil reserve. However, I observed the Kern County Land Company immediately prior and during the time I was writing the report. That was oil land, I should like to add.

Q. Taking Cal-Bay Corporation, for instance, into consideration, owning the lease that it did, and having started to drill the well that it did drill, at what point thereafter do you think would have been

(Testimony of H. K. Armstrong.)

the most opportune time for the sale by Cal-Bay Corporation of that leasehold interest?

A. I believe at the time it got the first showing in eocene sand.

Q. At that time what value would you allocate to the leasehold interest of Cal-Bay Corporation on the Mary Faria property of 208 acres?

A. I cannot answer that right off. I would have to put my mind back to consider that. That was quite a time back of the time I was asked to appraise it.

Q. In your opinion would the value have been higher than in November or December of 1944?

Mr. Bourquin: When does that "then" refer to, Counsel? What point of time? [940]

Mr. Scampini: I will put it this way: Would you have allocated a value to the leasehold estate of Cal-Bay Corporation on the Mary Faria property on July 24, 1944, which was higher than the value that you allocated to it on January 15, 1945?

A. I will have to refer to the log to know what the date—May I have the question?

(Question read by the reporter.)

A. No.

Mr. Scampini: Do you think the value of the leasehold estate of Cal-Bay on the Mary Faria property was approximately the same on July 24, 1944, as it was on January 15, 1945?

A. Mr. Scampini, the situation in my mind was this, that they had a somewhat poorly speculative prospect as of July, 1944. They drilled ahead and

(Testimony of H. K. Armstrong.)

found some evidence of gas to realize in a sense some of those speculative prospects. The value remained about the same throughout that time.

Q. When were those speculative possibilities realized?

A. You say "realized." It was my word. I think it was poorly chosen. They encountered showings which were, let us say, what they were hoping to find.

Q. In your opinion, the showings which they encountered were not worth very much, as far as raising the value of the property, is that right?

A. That's right. They were the kind of showings that are so frequently encountered. I say frequently, but insignificant in what the ultimate worth is, and I don't [941] regard them as significant.

Q. Is the basis of your opinion of the value of the Cal-Bay Corporation leasehold estate on the Mary Faria property, or one of the bases, your assumption that the formation penetrated in November, 1944, was in the cretaceous?

A. No, that is not right.

Q. Would your value have been higher than the one which you give if it were a fact the well penetrated the Martinez on November, 1944?

A. As of what date?

Q. As of November, say, 29th, or 27th, 1944.

A. I don't understand the question.

Q. Would you have allocated a higher value to the leasehold estate of Cal-Bay Corporation than the value which you have given if it were a fact that

(Testimony of H. K. Armstrong.)

on November 25, 1944, the well penetrated the Martinez and the gas which resulted in the blow-out came from the Martinez formation, and not from the Cretaceous formation?

A. Slightly higher, yes.

Q. How much higher?

A. 25 per cent, maybe. However, that question is really a very difficult one to answer without any study, because the amount of sand encountered, if it were assumed in the Martinez would be considerably significant inasmuch as in the Martinez it is possible to find sands which have good characteristics in producing gas. The experience has been pretty much to the contrary, and the thickness of sand found would almost have to be written into the assumption before I [942] could give you an answer.

Q. In arriving at your value, did you know how many feet of Martinez formation underlay the Cal-Bay Faria well below the point where the Martinez was penetrated?

A. Yes.

Q. How many feet?

A. Something less than 22 feet. That was both shale and sand.

Q. At what depth did you state were the 22 feet of Martinez formation in the Cal-Bay Corporation—

A. Somewhere between 4215 and 4237.

Q. Then you disagree with Mr. Norris and Mr. de l' Eau, that the well penetrated the top of the Martinez formation at 4975 feet; is that right?

(Testimony of H. K. Armstrong.)

A. That's right. As I stated before, I examined the cores at a depth of about 4400 feet, and it appeared to be cretaceous formation to me, and the very fact that my client—I advised my client and he lost interest in the project, and I did not return to the well.

Q. What client are you referring to?

A. This is the client I mentioned before, Peter Cook, Jr.

Q. When did you examine those cores for the account of Peter Cook, Jr.?

A. It was in October, some time in October, 1944; I don't remember the exact day.

Q. Were you at the well? A. Yes.

Q. Where did you see the cores?

A. At the well.

Q. What was the purpose of your visit to the well? A. To examine the cores. [943]

Q. For Peter Cook? A. That's right.

Q. Was he interested in acquiring some of this acreage?

A. Well, he had carried—he goes to San Francisco from Rio Vista where he lives every Thursday and drives by the well, and I drove by it with him frequently, and as a consequence we took a little side trip up and examined the cores. He did not continue thereafter.

Q. Where were the cores examined by you?

A. At the well.

Q. You say you concluded from your examination that they appeared to be cretaceous?

A. That's right.

(Testimony of H. K. Armstrong.)

Q. Are you a paleontologist? A. No.

Q. Are you a micro paleontologist?

A. No.

Q. You just looked at the cores?

A. That's right. I have looked at thousands of feet of them.

Q. Now, with respect to your opinion that no severance damage resulted to the portion of the leasehold not taken, is it not a fact that if a well were to be drilled on the property taken by the Government in this case to a productive sand that it would drain from the remaining property of Mary Faria, assuming that the sand was found to be productive?

A. May I have that question read?

(Question read by the reporter.)

A. If I understand the question—

Q. (By Mr. Scampini): Would not such drainage affect the value of the leasehold estate or the royalty interest of Mary [944] Faria?

A. Yes, and my reasoning on that is, of course, just the opposite to the one your question suggests to me; that is, because of the ponderousness of the Governmental agencies in doing anything that anybody holding a lease adjoining where Government land is sought has higher market value; that is the experience in the industry; that is over land where the competition comes in from private ownership. To my thinking, the severance damage may have been even a severance benefit. However, I don't think that is material.

(Testimony of H. K. Armstrong.)

Q. There is nothing to stop the Government or the Navy in this case from leasing the property which it had taken from Cal-Bay and Mary Faria to Standard Oil Company, and to permit the Standard Oil Company to drill a well thereon, is there?

A. I don't know.

Mr. Bourquin: That is a legal question.

Mr. Scampini: It is done every day; done every day. You are familiar with the Elk Hills Naval Reserve, aren't you?

A. Yes. That is an outstanding example of where Standard Oil Company produced wells, other wells within the Naval Reserve for many, many years, without a single well being drilled to offset the drainage the Navy was suffering. [945]

Q. And is it not a fact that the United States Government, acting through the Navy Department, thereafter leased or gave the right to the Standard Oil Company to drill wells on the property owned by the Navy?

A. I believe so, something like thirty years after the oil had been discovered.

Q. Now, when a potential buyer of the leasehold estate of Cal-Bay suddenly makes up his mind that he would like to buy the leasehold estate as of, say, December 15, 1944, do I understand you to say that that potential buyer would allocate no value to the well which was located on the property in your opinion?

A. That is right. The well only meant that here was something he could spend more money in and

(Testimony of H. K. Armstrong.)

finally find something. It was an entirely speculative thing whether he would find anything or not. He needed money to spend that money.

Q. It was a good hole down to 4,100 feet, wasn't it? A. Not ideal by far.

Q. It could be used, could it not?

A. It is something like an old mine shaft, which would have some utility, but the property without that on there had no attractiveness because access to it was pretty expensive.

Q. From a speculative point of view, the value you gave to the leasehold estate did not take into consideration any value for the well, did it?

A. That is right. I think it was practically all loss, wasted money. [946]

Q. And you think that this buyer could not have used the well that Cal-Bay Corporation had drilled down to 4,100 feet, whipstock out of that hole and continued drilling, is that right?

A. In my opinion a prudent operator would not attempt to do that.

Q. Do you know how many whipstocks were set in the Honker Bay well by the Standard Oil Company before it actually completed the well?

A. I heard of several, but I do not know.

Q. Is it a fact that they put twelve whipstocks in that well? A. I do not know.

Q. Isn't it a fact that they have five fishing jobs on that well?

A. I don't know. I know that they had a great deal of trouble and that they reported it cost them a great deal of money to drill it.

(Testimony of H. K. Armstrong.)

Q. Isn't it a fact that they spent almost a million dollars on that well?

A. I have heard three-quarters of a million dollars, yes. I think it was a dry hole, too.

Q. The Honker Bay well is a dry well?

A. The one that had so many fishing jobs.

Q. But they drilled another hole and brought in some very, very prolific production at Honker Bay, did they not?

A. The well is a fairly good well, but it is a restricted area, a small field, and probably never will repay the cost of development and the risks that were involved in exploration trying [947] to find it.

Q. Nevertheless the Standard Oil Company, after having spent about \$750,000 on drilling the Honker Bay, went ahead and drilled a second well in view of the findings, isn't that right?

A. Yes, they were very much attracted by the findings in the eocene sand as shown in the Schlumberger.

Q. Where were the eocene sands found in the Honker Bay well? At what depth?

A. I don't recall offhand. I have the Schlumberger in my office and a copy of the log and history, but I do not remember the figures.

Q. Wasn't it at 7,200 feet in depth?

A. I don't recall.

Q. Will you take a look at the log that I shall hand to you for the purpose of refreshing your memory?

(Testimony of H. K. Armstrong.)

Mr. Bourquin: What are you handing the witness, so the record will show? Is that the log of Cal-Bay?

Mr. Scampini: That is the log of the Honker Bay well that the witness says he has.

Mr. Bourquin: If your Honor please, this seems to me pretty collateral. I do not want to object to it.

The Court: If you object to it I will sustain the objection.

Mr. Bourquin: I object.

The Court: It is getting far beyond the field of cross-examination of a witness as to value.

Mr. Scampini: Just a moment, your Honor, and I think I am [948] through with the witness. I just wish to consult my associate.

Q. Mr. Armstrong, just one more question: Isn't it a fact that when leases are obtained by companies on potential structures or by lease scouts and the leases are obtained from the landowner, that in addition to the cash bonus that you have enumerated in the transactions referred to you there was also the royalty of $12\frac{1}{2}$ per cent, sometimes $16\frac{2}{3}$ per cent, allowed to the property owner?

A. I presume you mean the representatives acting as lease men for companies or lease brokers? You said scouts and I was a little uncertain.

Q. I will ask that question again. I withdraw my first question and see if I can make it clearer. Isn't it a fact that in the transactions that you have enumerated during your direct examination the

(Testimony of H. K. Armstrong.)

landowners, in addition to the cash bonus which you said was paid to them for the lease, received the usual royalty of $12\frac{1}{2}$ per cent and in some cases, $16\frac{2}{3}$ per cent of the oil or gas produced from the property?

Mr. Bourquin: You mean an agreement?

Mr. Scampini: Or an agreement to pay a royalty.

The Witness: The $\frac{1}{8}$ royalty is the usual provision in the leases that I am familiar with.

Q. (By Mr. Scampini): And would such a one-eighth royalty be reserved by the landowner in addition to the cash consideration received?

A. That is right.

Q. And in addition to that they would receive a commitment for [949] the drilling of a well, would they not? A. Not necessarily.

Q. Well, if a commitment for the drilling of a well was not given, wouldn't the lessor also agree to pay actual cash rental for the land, so much per acre.

A. That is very unusual, that the lessee will agree if he does not drill, to pay a rental, a nominal rental like 25 cents an acre a year or eight and a half or some figure for the privilege of deferring drilling another year.

Q. Sometimes a dollar a year, is that right?

A. It varies widely.

Q. Sometimes \$5.00 an acre?

A. I never heard of it in this area. That sounds like an oil lease to me.

Q. How about the incident where the cash con-

(Testimony of H. K. Armstrong.)

sideration was \$30 an acre? Was there any prospect of discovery of oil or gas in that district at the time?

A. Your Honor, I can't answer that question. In my opinion?

Q. Yes.

A. It was prospective land, a speculative thing. People were making their bets in the play and they hoped.

Q. Did you obtain such leases yourself in that district and pay that consideration?

A. No, sir.

Q. Did you recommend to any of your clients to do so?

A. I recommended at a dollar an acre, yes.

Q. Did your clients pay as high as \$30 an acre?

A. They did not. [950]

Q. Was it a major company that paid as high as \$30 an acre? A. Yes.

Q. Plus the reservation of the royalty?

A. Well, they did not pay any. They made a reservation; no royalty was paid.

Mr. Scampini: That is all.

Redirect Examination

By Mr. Bourquin:

Q. Mr. Armstrong, on this last subject, as I understand you, on these transactions the lessee pays a cash consideration and agrees that if oil or gas is discovered he will give a share, one-eighth usually, to the owner, is that it?

(Testimony of H. K. Armstrong.)

A. The owner reserves the right to get as a royalty a certain proportion of the oil or gas if and when produced.

Q. But except for that agreement the cash, whether you call it a bonus or what, is all he gets for the lease, is that it? A. Yes.

Q. This rental you spoke of, what is the rental for deferring drilling under these leases? Was it 8½ cents?

Mr. Scampini: It went as high as five and ten dollars an acre, sometimes \$25. It depends on the circumstances.

Mr. Bourquin: No, I am talking about the leases here.

The Court: The Cal Bay leases.

Mr. Bourquin: Eight and a half?

Mr. Scampini: I think so. I think that is correct. [951]

Mr. Bourquin: If it is not drilled within the stipulated time. One more question.

Q. Counsel asked you if these transactions that you told us about had been carried up and down this area in northern California, the trading, were not all transactions with uninformed persons; he spoke of the farmer. Let me ask you this: In whose hands were the Potrero Hills wells that you pointed at there that were drilled?

A. Richfield Oil Company.

Q. Would you consider the Richfield Oil Company to be an informed person?

A. Definitely.

(Testimony of H. K. Armstrong.)

Q. And one who knows, one that a broker would not take advantage of? A. I think not.

Q. How about the matter up at Sites that you told us about where they had an experience like this at the Potrero Hills and the wells were abandoned and sold for a dollar?

A. That was the Continental Oil Company that abandoned that well and those leases.

Q. They abandoned them? A. Yes.

Q. They gave it up for nothing?

A. Yes, they quit-claimed it back to the owner.

Q. What about that Capital Company well that is spoken of here? Who drilled that?

A. I believe that well was one drilled by the Ohio Oil Company. They had a very spectacular blowout in one of their wells. It was known all over the [952] country because of the spectacular nature of it. The well produced an estimated twenty, thirty or forty million feet of gas and a lot of water. The well cratered. The derrick fell in. The boilers and all the equipment fell into the crater, and the thing bubbled and erupted for several days. The company immediately employed another contractor to drill a well alongside the well that was blowing wild with a plan of deflecting in that well and killing it by pumping mud into it, and while they were doing that, that well died, and so they did not carry out their plan with the second well. They continued to go deeper with the second well that was originally intended to kill the blow-out, and they made a small gas well out of it. They

(Testimony of H. K. Armstrong.)

were unable to duplicate anything near the proportion of the first well. Then they moved south some distance and drilled a third well and got some production there, and concluded it was not an attractive commercial situation, that they were not going to make enough money out of it to keep it, and so they quit-claimed the wells and leases back to the landowner.

Q. Gave it up for free? A. That is right.

Mr. Bourquin: That is all.

Recross Examination

By Mr. Scampini:

Q. At the time the blowout occurred in this well that you have just spoken about, what do you think was the fair market value of the leasehold estate of the [953] Ohio Oil Company per acre on the property leased at the time?

A. Well, I can only answer that it was coming out of the Cretaceous and nobody gave it much weight.

Q. What value would you allocate to the lease of the Ohio Oil Company on the property in question at or about the time when this extraordinary blowout occurred, per acre?

A. I do not think it would have had a high market value. The gas was accompanied by salt water, as it was in the Faria well, and the mud was cut by the salt water and gas, and consequently this accident—a blowout is an accident. It is not something you encounter in the regular drilling of a well—

(Testimony of H. K. Armstrong.)

and while it was so spectacular in its nature, people were interested in it as a curiosity, but not as a gas venture.

Q. Do you mean to state, then, that the Ohio Oil Company with all of its experience went to work and drilled a second well and a third well there in spite of the poor showings and prospects obtained from the first one?

A. That is right, and then abandoned them all.

Q. In your opinion, then, they did not know their business, is that right?

A. In my opinion they were satisfied it took more gas than they were able to obtain from these wells to make it attractive to them as a business matter.

Q. But they thought the leaseholds to be of sufficient worth in money to warrant the expenditure of enormous sums of money for the drilling of a second and a third well, is that right? [954]

A. As I recall, they were not particularly expensive wells, and I could give you the details as to how much gas they got from the second and third wells.

Q. How much money did they spend on the drilling of the second well in reliance on the showings of the first well? A. I do not know.

Q. Would it be a hundred thousand dollars?

A. Probably not. It was a relatively shallow well.

Q. How deep was the well?

A. It was drilled to 6,000 feet and plugged back

(Testimony of H. K. Armstrong.)

to 2,248, and was completed between the depths of 2,237 and 2,245 feet for 5,356,000 cubic feet per day rate.

Q. And that production came from the Cretaceous, you say?

A. Cretaceous production. The shut-in pressure on the tubing was 515 pounds, and after it went up to 600 pounds, then they drilled another well.

Q. How much did they spend for drilling the second well to 6,000 feet in your opinion?

A. I can only make a rough estimate. Probably \$60,000.

Q. How much do you think they spent for drilling the third well?

A. The third well was 3,300 feet and they probably drilled it for 25 or 30 thousand dollars.

Q. So you would say the Ohio Company spent approximately \$100,000 based upon the showings obtained in the first well, isn't that right?

A. Yes, that is right. [955]

Q. How many acres were embraced within that lease?

A. I think my figures are correct. Approximately three thousand acres.

Q. All on the structure?

A. That was the geophysical plane. I don't know how much of it was good.

Mr. Scampini: That is all.

Mr. Bourquin: No further questions. We have just one more witness, your Honor, the valuation expert. Do you want us to proceed?

The Court: I think so, Counsel. I was thinking maybe we ought to have a night session to-night. This case is taking a long time and there are other important cases, including criminal cases, waiting for trial. I do not know whether counsel planned to argue this case to the Jury or how long they will want to argue. I want to get it to the Jury tomorrow or the next day at the latest. I do not see how we can do it unless the evidence is completed.

Mr. Scampini: Our rebuttal will not take very long, I might say.

The Court: Suppose you get started with your witness, Mr. Bourquin, and see how far we can get.

PAUL PAINE

called as a witness on behalf of the plaintiff; and being first duly sworn, testified as follows: [956]

The Clerk: State your name to the Court and Jury?

A. Paul Paine.

Direct Examination

By Mr. Bourquin:

Q. Mr. Paine, what is your business or profession, please?

A. I am in the oil business. I am an engineer.

Q. Will you trace for us or state for us what has been your training and experience in the oil business?

A. My training was had at the Massachusetts

(Testimony of Paul Paine.)

Institute of Technology, from which I graduated in 1905. I came west, was in mining work a few years until 1908, when I began working in the oil fields, and since then I have been continuously connected with oil field operations.

Until 1917 I worked in the fields of California, the latter part of that period as field superintendent of the Honolulu Oil Company, a concern which drilled wells and produced oil, which was sold to refineries, and gas, which was piped for distribution in Bakersfield and Los Angeles.

I then went to Oklahoma with the Gypsy Oil Company, the operating unit in the mid-continent area of the Gulf Oil Corporation.

In 1921 I cut loose on my own hook and since then I have had no continuing corporation connection, except that for several years I was on the board of directors of the Union Oil Company, and for one year, from the middle of 1922 until [957] the middle of 1923, I was vice president of the Shell Company of California, in charge of its production operations.

My partner and I drill wells and produce oil in a small way and entirely for our own account, and in addition to that I have an independent engineering practice, which is occupied chiefly with the valuation of oil properties and gas properties and companies.

I neglected to relate that I have had two other continuing connections for a number of years. For the Kern County Land Company I am a director

(Testimony of Paul Paine.)

and am concerned with its oil affairs. For Bank of America I am its consulting petroleum engineer, chiefly for the purpose of passing on the values of oil and gas properties which are submitted as collateral in connection with loans.

Q. Mr. Paine, have you made an appraisal for the purpose of presenting it here of the properties which are the subject of this proceeding, consisting of the Cal Bay and Joe Faria leases there and the royalty interests in those leases? A. I have.

Q. Have you made a study and investigation of that property? A. Yes.

Q. Have you made a study and an investigation of the surrounding properties?

A. To a limited extent.

Q. To a limited extent? A. Yes.

Q. Do you know and are you prepared to say what oil and gas properties for such explorations have been and sold for in Northern California?

A. Yes, gas properties. I know of no oil property operations.

Q. You know of no oil properties in Northern California? A. No.

Q. Have you considered the geology of this situation over there in Cal Bay and the Faria well?

A. Yes.

Q. Have you examined the log and the mud and Johnston reports for the data that they would provide?

A. I should say I have not informed myself as thoroughly as some of these witnesses on the geology.

(Testimony of Paul Farns.)

I have reviewed the driller's log, the history of the well which was provided to the State Division of Oil and Gas. I have listened to the account of the oil operations which has been presented here.

Q. Upon these have you formed an opinion of the market value of the properties as of the dates in question? A. I have.

Q. Will you tell us, please, what is your opinion of the market value of the 28.57 acres in parcel 28 that was part of the property of Horn Farm and subject to the Cul Bay lease, as of [1942] January 22, 1942? A. For the entire mineral interest?

Q. For the entire mineral interest, if you will, please?

A. \$1500. That is at the rate of \$52 per acre.

Q. Can you tell us how you allocate, if you do, that between the leasehold value and the royalty value as respect their market value as of the date in question?

A. To the lessee, \$1072, that is \$8 per acre; and to the lessor, value was Cul Bay \$428. Now understand that the \$1072 is the value of the lessor's reservation of one-eighth acre.

Q. What, in your opinion, was the market value of the mineral interest in parcel 28 consisting of the 1 acre, subject of the Cul Bay lease, which was the property of Edward Farns as of January 22, 1942?

A. The total mineral interest \$80, at the rate of \$80 per acre, allocated to the lessor \$20 to the lease \$60.

[Testimony of Paul Paine.]

Q. When you say to the lessor, that represents, again, the royalty interest?

A. The royalty reservation.

Q. And to the lessee \$30?

A. To the lessee \$30.

Q. What about that other small parcel in there that is a fraction below 5 acres, consisting of parcel 57, which was the property of Mae Roche, and subject of the Cal Bay lease as of January 15, 1945?

A. Well, I have worked this out as of July 24, 1944. Are you sure that is the correct date?

Q. That parcel as of July 24? No, I think perhaps that is my fault in giving you the legal filing dates. You are right. [960] It is July 24, 1944. Tell us about the 5 acres, the property of Mae Roche under the Cal Bay lease on July 24, 1944?

A. That is \$120 at the rate of \$24 per acre, allocated \$60 to the lessor interest and \$60 to the lessee.

Q. Coming to these properties, subject of the Joseph Faria lease—and I will say that the date of valuation there that we want you to give us, if you can, is the market value as of July 24, 1944—take first the 63.91 acres in parcel 59, which was the subject of the Joseph Faria lease.

A. \$1152 for the full mineral interest at the rate of \$18 per acre, allocated, to the lessor \$640, to the lessee \$512.

Q. What about that little piece of .65 of an acre in parcel 64? What is your opinion of the market value of the mineral interest in that as of July 24, 1944?

(Testimony of Paul Paine.)

A. \$5.20, at the rate of \$8 per acre.

Q. \$5.20?

A. Yes, allocated \$2.60 to the lessor and \$2.60 to the lessee.

Q. Lastly, what is your opinion of the market value as of July 24, 1944, of the 96.59 acres—again I am forgetting. That is the Joe Faria lease on the Chevez property, which they have withdrawn.

Mr. Paine, will you state for us your reasoning on the basis of the conclusions of values that you have arrived at and announced to us?

A. The basis of this valuation has been, first, the consideration and review of the history of this well [961] and the accomplishing of the exploration effort contained in this well, and the results obtained from it; also a consideration of the seepages of gas and the seum of oil which is reported as having been found on the wells nearby, and the general conditions in the surrounding gas fields of this Northern California region, and, finally, my knowledge of what acreage has sold for in actual transactions between operators and owners of leasehold interests, land owners and the oil companies, in connection with their acquisition and testing of these various areas where they have drilled wells. Do you want a lot of detail on this?

Q. No, I think not. As far as this question of severance that has been asserted here, is it your opinion that the property of Mary Faria that was not included in the taking and consisting of 158 acres in parcel 59 was depreciated in value, in

(Testimony of Paul Paine.)

market value, by the taking of the property that the Government did take?

A. No, my belief is as to all of these tracts that the severance did not affect adversely these pieces that lay outside the boundary.

Q. For what reason, please?

A. Because they are of sufficient size to warrant developing, and they could have been developed, and I feel that their position, if anything, would have been benefitted. If there were a gas field underneath their position would have been benefitted rather than been injured by the acquisition by some agency of this nature which probably would not go ahead and develop it, and therefore the tracts [962] outside would get the benefit of having the straws in the lemonade and getting the benefit of drainage.

Q. One last question: In your opinion did the existence of this well on the property upon which it was located, parcel 59, add anything to the market value of that property as of January 15, 1945?

A. No.

Q. Why, please?

A. Because the well was in bad shape. It was plugged and then had been redrilled. It was plugged again, and a prudent operator—I think that a prudent operator would have started with a new well from the grass roots. Certainly I would have done so, because of my experience many times in taking over situations of this kind. One never knows what the condition of the well is, and I have

never yet worked on one where the actual condition underground was one as described. There is always something. The boys do drop a monkey wrench in it, and working over these old junked wells is too uncertain, contains too much grief.

Q. Will you tell us, Mr. Paine, from your information, what have such properties in which there have been explorations for mineral interests in this vicinity bought and sold for?

A. The companies that are active up there and are buying leases generally starting out lease and pay a dollar an acre. They are not limited to that. They frequently go up to \$2 or \$3. It may reach as high as \$5 an acre. If they are putting together a block which they expect to explore and have gotten [963] together the best part of it at a lower rate, they will maybe reach out and pay \$10 or \$20 for select pieces that are needed to close out the block. They probably would not pay that for the whole thing, but, after all, the \$20 or \$25 an acre they pay becomes diluted over the entire acreage. That is a measure or the order of magnitude of prices that are paid by lessees in exploring for gas up in that region, and \$1 an acre was the prevailing rate for a long time.

Right currently, there is a leasing going on south of Rio Vista. I would rather not give the exact spot. But there is leasing going on south of Rio Vista by two major oil companies. They are paying \$2 an acre for leases. Now, sometimes they will pay $1/6$ royalty in the lease instead of a $1/8$ th. The royalty reservation has moved up somewhat.

(Testimony of Paul Paine.)

Over northwest of Rio Vista in a locality Shell Oil Company now, by reason of a trend from discoveries it has made, is paying up to \$10 an acre. Now, that is for selected acreage that they rather want. I am speaking now of the price paid for a lease which contains a reservation to the land owner of a $\frac{1}{8}$ or $\frac{1}{6}$ royalty.

It is almost impossible to get any records of sales of mineral interests, that is, the mineral under the land separated from the surface. Actual sales of mineral interests are exceedingly rare, and one principal reason for it is, these lands are valuable agricultural lands, lots of them, [964] and the amount which the dealer, the trader, the investor and the oil company would be willing to pay for the full mineral interest is way less than that which the farmers and the land owners will accept. They have all discussed it. They know that it is the part of bad wisdom to accept \$10, \$20 or \$25 an acre for the full mineral interest in the land, simply because it affects their title so badly. Separation of those mineral interests from the surface just fritzes the title of a lot of this \$500 and \$1000-an-acre land. The full mineral interest, therefore, is exceedingly difficult to ascertain.

There was a trade made recently in Chico in a block that Standard Oil is putting together and buying at from \$1 to \$3 an acre for leases. There was one 40-acre tract where the owner would not lease. He would sell the whole thing for \$50 an

(Testimony of Paul Paine.)

acre. It was rice land which was worth \$35 or better per acre. So they feel, having bought the mineral interest, they have paid something under \$15 an acre for that. That is the only specific interest I know of of the sale of a mineral interest although many efforts have been made going through there to buy mineral interests from the farmers; they just would not sell.

Q. You mean by that they will retain the control of the property?

A. When they lease they do not part with their lands. When they sell a mineral interest they are segregating the mineral rights underground and parting with their interest, and that gets into the abstracts, and the title companies' records; whereas if they [965] lease for the drilling, when the lease is terminated they get a surrender from the oil company, and their title is clear. They are perfectly ready to lease in most instances.

Q. So the commonest trading is the trading of leaseholds? A. Oh, yes.

Q. And the trading of royalties?

A. Yes. The trading in royalties is not as active as one might think, certainly not nearly as active as it is around the oil fields.

Q. How do you arrive at your appraisal of the value of the royalty interest?

A. Well, I just divide it off into what I consider to be a ratable proportion. There is no formula. It is a matter of opinion. I wish I could be more specific, but I can't.

Mr. Bourquin: I think that is all.

The Court: Would you prefer to defer your cross-examination until the morning?

Mr. Scampini: Yes.

The Court: This is your last witness, Mr. Bourquin?

Mr. Bourquin: Yes, your Honor.

The Court: Would you gentlemen be prepared, then, to argue the matter tomorrow afternoon?

Mr. Scampini: I am.

The Court: You think there would be no doubt about concluding the evidence tomorrow morning?

Mr. Scampini: My rebuttal won't take very long, I assure [966] you.

The Court: I would like counsel to remain if they will. I will excuse the jury until ten o'clock tomorrow morning. Please bear in mind the admonition of the court.

(Thereupon the jury was excused and retired from the court room. The following proceedings were out of the presence of the jury.)

The Court: I do not know what counsel have in mind with respect to the time for argument. I suppose each side would want some reasonably substantial period of time to argue the case. I think it only fair to say, however, to the counsel for the defendants, as I do not want them to be in the dark as to the court's attitude in the matter, as to what the court has in mind to say to the jury in this case, and it would be, in my opinion, very unjust to the counsel for the defendants if they

would proceed to argue the case and be in the dark as to what the court might instruct the jury—that in my opinion would be unfair. It may be other judges might take the view of having counsel go ahead and argue the case according to their lights and then tell the jury about it afterwards. But I feel that from my own experience as a lawyer for many years, lawyers like to know and do not like to be kept in the dark. I feel duty bound in this case, from what I have heard, to tell this jury that in the opinion of the court the view of the so-called experts presented by the defendants is entitled to no weight [967] whatsoever, and that the opinions that they have given are fantastic and are at a borderline, at a point where a more serious criticism could be made of them.

Now, having that in mind, it may be that counsel may have some views as to how they want to present this matter to the jury, or whether they want to present it to the jury at all. I am very frankly stating the view of the court. It is not binding on the jury, and when I give it to them I shall be most specific to tell the jury that they can come to any opinion that they want on that subject, but I shall nevertheless feel it my duty, as I have had occasion to do only once before in any case since I have presided in this court, to express an opinion on the facts of the case; but I feel that my conscience prompts me in this case to make an observation to the jury as to the opinion of the court as to the weight of this evidence. I say that so counsel may know about

it, because it may be it might put an entirely different aspect upon the manner in which counsel wish to present the case to the jury, and it is only fair to repeat myself that they should know about that. It is better that they know about it now than that they be taken by surprise afterwards.

I am not called upon to pass upon this question yet, but if the jury were, despite the statement of the court as to its opinion as to the weight of the evidence, to bring in a verdict for any large sum in this case I would feel duty bound to set [968] it aside, because this case does advise some technical aspects and the jury might very easily be misled.

I have very frankly apprised counsel as to my view of the case because I feel that, as a judge, I just cannot compromise with a conscientious viewpoint that I might have, and it is better to state it than it is to leave it unsaid and have counsel flounder and not know what is going to happen.

I assume from what counsel has said that the evidence will probably be completed tomorrow morning and you may want to give consideration, from what I said, to the manner in which—this applies more particularly, of course, to the counsel for the defendants—the way in which you wish to present this matter to the jury. If you wish a longer recess after the evidence is concluded tomorrow morning in order to prepare for the argument, at whatever time the evidence is completed, I would be willing to adjourn until the afternoon session to give counsel as long as possible, in addi-

tion to the time between now and tomorrow, to prepare any matter.

Mr. Scampini: All I can say in reply to your Honor's observation is, with all due respect to your Honor, and to the court, that it appears to me that the record shows that throughout the trial of this case your Honor has had a somewhat partisan outlook on the litigation before you.

The Court: Not until I had heard the opinion testimony offered by the defendants. [969]

Mr. Scampini: When it comes to that, your Honor, I respectfully submit we have a jury to pass upon the weight to be given to the testimony of the witnesses. The Constitution guarantees us the right of trial by jury for that very reason. It appears to me that this is a matter that should be left to the jury for its decision, subject, of course, to the law that if your Honor should deem the verdict or judgment excessive, upon proper motion your Honor can exercise your prerogative. As far as I am concerned, as counsel for the defendants, I ask leave to address the jury within the scope of the examination and the evidence, without any effect whatsoever upon my intentions brought about by any remarks of your Honor during this session.

The Court: I did not intend that you should change whatever you had planned to do. I merely wanted you to know about it in advance so if you felt you wanted to comment upon it you could feel free to do so, so you won't be in the dark about it.

(Testimony of Paul Paine.)

Mr. Scampini: I appreciate your Honor's admonition and forewarning. I had the lurking suspicion that that was coming for sometime. I feel it is highly unwarranted. I feel your Honor should also tell the jury that the estimates of the plaintiff's experts are fantastically low, because here are my clients with a quarter of a million dollars sunk in this property expropriated from them, and now you are going to tell the jury my witnesses' opinions are fantastically high. I [970] think it is most unfair, your Honor.

The Court: Mr. Scampini, if this were a suit for damages based upon a tort or breach of contract, there would be considerable in what you say. In other words, if you were seeking damages for some wrong that had been committed, all that you say would be quite appropriate, and you would be quite justified in your attitude in the matter. But this is not a suit that arises out of a wrong or out of a breach of contract. This is a suit that involves the superior right of Government to take private property, and the only question there involved is the value of it at the time. There is no expropriation in the sense that any wrong is committed by the action for which the Government is liable for damages. The Government is required by the Constitution to pay just compensation for whatever is taken at the time that it is taken. That is the only question involved. The Government of the United States cannot be required to recoup the promoters of this enterprise for their expenditures in connection with

a speculative proceeding of this kind, and, I take it, you think perhaps the jury should do something about that.

Mr. Scampini: No, your Honor, we do not.

The Court: The court is of the opposite view.

Mr. Scampini: I take the view that the same Constitution to which your Honor has referred places the duty on the jury to determine just compensation, subject to your Honor's right [971] under the law and the statute, to set it aside if you deem it not consistent with the law, but I do not think it is within the province of the court—and I say so most respectfully—that you should tell the jury in the fashion that you have expressed yourself, and I take exception, of course, and take exception to the record, to any such admonition on the part of your Honor to the jury.

The Court: I think the court has the inherent power to make comment on the evidence, as long as it tells the jury that it is merely the opinion of the court. The higher courts have admonished the lower courts in the Federal system time after time to make quite clear to the jury the issues that are involved in the case, and lower courts are frequently admonished to do more than merely instruct in formula fashion, but to lay before the jury clearly the exact issue and the nature of the evidence that is involved in these issues, and I feel it to be my duty in this case to do that.

In order that the record may be quite clear, I wish to repeat again I have made this statement to counsel only for the purpose of advising them in

advance, so that counsel may be free, so far as I am concerned, to tell the jury, if they wish, that the judge has already told them his opinion of the weight of the evidence, but counsel are of a different opinion, and they feel free to tell the jury what they think about the case. I have no objection, whatsoever, to the matter being opened up, [972] so that counsel can take, if they wish, the sting out of the judge's comment on the evidence in advance in their argument, if they wish to, and that is the purpose of my statement now. I need not have done it, but I did it because I know that counsel a lot of times in these cases should have the advantage of that in advance.

Mr. Scampini: I thank your Honor for the courtesy extended to us in advising us of your attitude in this matter.

The Court: We will recess until tomorrow.

(The further hearing of the case was thereupon continued until tomorrow, Thursday, February 6, 1947, at ten o'clock a.m.) [973]

Thursday, February 6, 1947, 10 o'Clock A.M.

The Clerk: United States vs. Certain Land in Contra Costa County.

Mr. Scampini: Ready.

Mr. Bourquin: We are ready.

PAUL PAINE

recalled; previously sworn.

Cross Examination

By Mr. Scampini:

Q. Mr. Paine, is your valuation of the subject property given by you yesterday based upon any assumption, or the assumption that no commercial discovery of natural gas was made in the Faria well at any depth?

A. That is correct.

Q. If the assumption were not true, that is to say, were it a fact that a commercial discovery of natural gas was made in this well, would your valuation have been higher?

A. If it were proved my valuation would be higher.

Q. Can you state how much higher the valuation would be?

A. No, I cannot, because I would have to know something of the well and the information available.

Q. Was your assumption based, I mean was your valuation based on the assumption that no discovery of natural gas was made in the formation penetrated in November, 1944, at 4975 feet? [974]

A. May I have that question?

(Question read.)

A. The assumption was that I do not know whether a discovery were made or not?

Q. Was your valuation based upon the assumption that the result of drilling the Faria well disproved the property as being a potential commercial producer of oil or gas in commercial quantities?

(Testimony of Paul Paine.)

A. No, it was not. There was no disproof. It was simply based on the assumption that all the evidence so far was entirely negative with respect to having determined its commercial size.

Q. In other words, it still might have possibilities in your mind?

A. Yes. All lands have possibilities until the wells have penetrated every part of them.

Q. In this case is it based on the assumption by you that there were no other sands underlying Faria well below 4975 feet that could be penetrated——

A. I made no assumption as to the sands that might be below.

Q. Have you any opinion whether or not any other sands underlie the Faria well after 4975 feet?

A. It would seem to be a guess.

Q. Yes. A. What was the depth?

Q. 4975. A. Yes; that answer is correct.

Q. Was your valuation based upon the assumption that the well at 4975 feet had penetrated the cretaceous formations? [975]

A. I didn't know whether it had penetrated the cretaceous formation. I can't recall as to where the Domengine, the Martinez and the cretaceous were in there. My opinion is that it had penetrated the cretaceous; I don't know.

Q. Did you consider your valuations or your opinion to have been that it was not?

A. No, I did not.

Q. With respect to your statement that the well had no value to a prospective buyer, is it based on

(Testimony of Paul Paine.)

the assumption that the well was, in common language, completely junked?

A. It was not completely junked, no.

Q. Were 4100 feet of the well in good condition, as far as you knew?

A. I just don't know.

Q. Would not a well which had been drilled to 4100 feet and completely cased and in good condition to 4100 feet be of some value to one who was interested in buying the leasehold, in your opinion?

A. At 4100 feet, if it were cased and required a dragging job and were underlain with what has been disclosed with respect to this well, I would consider it would be no value.

Q. The buyer of this leasehold would not be interested in buying the leasehold except for the purpose of drilling?

A. I don't know.

Q. In other words, people just don't buy leaseholds and make leases for the purpose of just doing that?

A. I don't know.

Q. Well, oil operators don't do that?

A. Not oil operators—[976] some oil operators do; oil producers don't.

Q. Oil producers don't. An oil producer would want the leasehold for the purpose of development?

A. That would be what was contemplated.

Q. Would not such an oil producer contemplate the purchase of this leasehold, or one contemplating its purchase, would he mind saving money by using the well?

(Testimony of Paul Paine.)

A. I can't answer that question, because no oil producer would contemplate buying this property. He would have to be a gas operator, not an oil operator.

Q. I am talking about a gas operator.

A. Shall I assume any time you say "oil operator" you mean "gas operator"?

Q. Yes. Would not a person interested in acquiring a producer of natural gas—thank you for the correction—would he not take into consideration and allow a value for that 4100 feet of the well that was completed before?

A. Well, the well is only 4100 feet deep.

Q. Assuming the well to be in good condition to 4100 feet. [977]

A. And nothing below it? I keep thinking of this well, and when you say 4,100 feet, you mean this well, this well has much more to it than 4,100 feet.

Q. What was there between the surface and 4,100 feet that prevented it from being used by a producer of natural gas?

A. Well, there was a string of casing which would have to be drilled through, and then if the well would be deepened, there would be the many difficulties or uncertainties with respect to the material that was below that portion of the well which can cause great uncertainty and great hazards in the deepening of the well.

Q. Could a whipstock have been set at 4,100 feet and continued drilling through the whipstock?

A. Yes.

(Testimony of Paul Paine.)

Q. And by so doing save the cost of drilling the 4,100 feet above?

A. No, not necessarily. That is the uncertainty which a prudent operator would not have ventured with this well, with all the material which lay below in this old well.

Q. Do you exclude the possibility of a producer of nautral gas allowing a value for the 4,100 feet of casing?

A. You are getting back to the same question. If you permit me to recognize it was in this hole, I say your prudent gas operator would have elected to commence a new well from the surface.

Q. In arriving at a fair market value of the leasehold as testified to, have you also taken into consideration the price [908] at which the owner of the leasehold might be willing to sell, or did you just figure from the point of view of the buyer?

A. No, I assumed conditions of the meeting of a willing seller and a willing buyer, that is, a buyer who was willing and able to buy and a seller who desired to sell, but was not forced to do so, with both of those being reasonably informed of the facts.

Q. And that is the basis of your valuation, is it not?

A. Yes.

Q. That is the test you have applied?

A. Yes.

Q. Do you mean to state, Mr. Paine, a person, an operator owning this leasehold and having drilled this well and knowing the condition of the well, as he must have known it, would have insisted upon

(Testimony of Paul Paine.)

being paid the reasonable value of the well as part of consideration for the sale of this leasehold?

A. I do not know what he would have done.

Q. Put yourself in his position as a willing seller not forced to sell: would you have required it?

A. Desiring to sell.

Q. Desiring to sell, but not forced to sell; would you have required it if you were desirous of selling, but not forced to sell?

Mr. Bourquin: That is argumentative, your Honor, because it cuts the legal equation in half.

The Court: I think it is an argumentative question, hypothetical. [979]

Mr. Scampini: It is the test of fair market value, your Honor, a willing buyer and a willing seller.

The Court: There is no doubt that you could pursue that, but this particular question, I think, is both hypothetical and argumentative.

Mr. Scampini: Let me see. Perhaps I can re-frame it to meet the objection.

Q. In applying the test of fair market value that you did, Mr. Paine, did you place yourself or try to place yourself in the position of the owner of the leasehold and the well and assume that you were desirous of selling, but you were not forced to sell, and did you conclude that you would not require payment of the consideration for the reasonable cost of the well?

A. I would have considered the well to be worthless, aside from the physical equipment which was

(Testimony of Paul Paine.)

removable. We are talking just about the hole in the ground, not the boilers, the derrick, the pumps or the material which was salvageable.

Q. Assuming you to be the owner of this leasehold, you would have considered it to be worthless, is that right? A. On January 15, 1945.

Q. How about December 15, 1944, before the abandonment proceeding?

A. I know of no difference with respect to December 15.

Q. The hole on January 15 had been completely plugged up and [980] abandoned, had it not?

A. I do not know. I do not recall the date of the abandonment.

Q. Did you consider the hole as being an abandoned hole when you placed your values on these properties?

A. That made no difference to me.

Q. That made no difference to you?

A. No.

Q. For the purpose of arriving at your opinion that the well was junk and worthless, did you take any statements from any of the men who had worked on the well?

A. No, I did not. I relied on the driller's log of the well and the well history which had been supplied to the State Division of Oil and Gas, and the information which has been provided here.

Q. Did you discuss it with any of the representatives of the Standard Oil Company?

A. Not that I recall, not the condition of the well, no.

(Testimony of Paul Paine.)

Q. Did you obtain any information from the Standard Oil Company which you used in arriving at your figures and valuation?

A. No, I did not.

Q. Did you examine the cores of the Faria well?

A. No, I did not.

Q. Is the Standard Oil Company, a substantial stockholder of the Kern County Land Company, of which you are a director?

A. So far as I know, it does not own any shares in it.

Q. Is the Standard Oil Company one of the large lessees leasing substantial portions of the lands of the Kern County Land [981] Company, of which you are a director?

A. It is the lessee on important oil field properties with oil production of importance.

Q. Did you make it a point to obtain any information from the company's offices or the company's geologists or engineers, for the purpose of arriving at your opinion?

A. No, I did not.

Q. Or for the purpose of arriving at your conclusion that the well was useless?

A. No, I did not.

Q. Did you rely upon the geological findings and the conclusions of Professor Taliaferro in arriving at your opinion?

A. No.

Q. Do you disagree with the conclusions or findings of Professor Taliaferro?

A. No.

Q. Did you examine the report?

A. No.

(Testimony of Paul Paine.)

Q. Is it not true, Mr. Paine, that in your experience as an appraiser no satisfactory working formulas for the determination of land values on unproved prospective oil lands have ever been developed?

A. I think that is a reasonable statement.

Q. Is it not true that all unproved land values, or values of oil and gas leases, or royalty interests are affected at any given time chiefly by the following factors:

One, the known geological conditions of the territory.

Two, the leasing activity and competitive bidding for lands [982] in the neighborhood.

Three, exploration activities in the locality.

Four, the lease terms themselves.

A. All of that has a familiar ring.

Q. It comes from your book, doesn't it?

A. Yes.

Q. Did you consider your valuations on those bases?

A. Yes. Those are elements which came into my valuation.

Q. And you took all those factors into consideration?

A. Those which were pertinent.

Q. Were any of them not pertinent in this case?

A. I will have to look over them. Will you read them to me again?

Q. The known geological conditions?

A. Yes.

Q. Did you conclude that geologically the structure was unfavorable?

A. No, I did not.

(Testimony of Paul Paine.)

Q. Did you conclude that there was no leasing activity in this case in the neighborhood?

A. No, I had heard of leasing activity.

Q. Were there any exploration activities being conducted on the property?

A. There had been.

Q. Isn't it a fact that the exploration activities were in full progress on December 15 when the Navy took possession of the property—December 15, 1944?

A. I am not familiar with what was happening there on December 15. I relied on January 15.

Q. Of course, on January 15 the Navy had already taken possession [1983] of the property?

A. But, so far as I know, on December 15 it was all over. There was nothing going on.

Q. Let us see if I understand you, Mr. Paine. You mean there was nothing going on with respect to drilling, or nothing going on because the Navy had taken the property?

A. No, the pipe stuck in the well and, as far as I know, there was no drilling activity going on.

Q. In your experience as an engineer—and I concede you are one of our leading ones on the subject—Mr. Paine, is it not a fact that a fish stuck in a well or a fishing job is not uncommon in the oil business or natural gas business? A. Quite.

Q. It happens every day in the business, doesn't it? A. Yes.

Q. That does not mean the well is going to be abandoned merely because something like that happens? A. No.

(Testimony of Paul Paine.)

Q. It may take a little time to go around it, but you can get around it, can't you?

A. Yes; seldom weeks and months elapse without any work on it.

Q. Depending on the conditions, is that right?

A. Yes.

Q. Isn't it a fact that in the Honker Bay well drilled by Standard Oil three and a half miles away they had twelve whipstocks before they finished the well?

A. I am not informed on that.

Q. Have you had any information on it?

A. No.

Q. Would you dispute the statement if I made it?

A. No. [984]

Q. Is it not true, Mr. Paine, that based upon your experience, oil and gas leases, unproved but with good geology, may rapidly rise on the market from a nominal price of \$5.00 and \$10.00 to as high as \$200 an acre upon news being circulated in the territory that a test well is to be drilled in the vicinity?

A. That is a fair statement, particularly with respect to oil. The general level of the oil lease prices is materially higher than gas lease prices.

Q. Will you concede, Mr. Paine, that natural gas under certain circumstances is as valuable as crude oil?

A. You can't compare the two. Natural gas leases are very valuable if they are situated properly.

(Testimony of Paul Paine.)

Q. Gas fields can be worth many, many millions of dollars under certain circumstances, is that right?

A. Yes.

Q. Would you try to capitalize the gas value of the Rio Vista field in millions of dollars?

A. It extends into millions of dollars.

Q. How about McDonald Island?

A. Not so much.

Q. Not so much, but it would also extend into millions, wouldn't it, though not so many million?

A. Many less. Rio Vista adds up to all the gas fields in California, put together.

Q. Is it not true that if discovery were to be reported to have been made in the test well being drilled in the vicinity that the values of the leases on property adjoining or approximately near the test well would rise very rapidly? [985]

A. That would all depend on the circumstances.

Q. Could it so happen?

A. It is possible.

Q. Do you know of any instance where it has happened in California?

A. Where it has happened?

Q. Yes. A. Yes.

Q. Is it not true, Mr. Paine, that generally speaking, in California royalty interests reserved on the oil and gas leases by the owners of the land in an area or structure which is in the course of being tested by the drilling of the exploration well are usually considered to be worth by the industry and dealt in at from \$50 to \$100 per royalty acre?

(Testimony of Paul Paine.)

A. That applies particularly to oil.

Q. How much difference is there between oil values and gas values in an incident the like of which I have just related?

A. I would say four or five to one; that is, the relative values of gas interests of the same character would be one quarter or one fifth, or something of that order of magnitude.

Q. Is it not true that prices of such royalty interests would go much higher if any kind of a promising indication were reported to have been found in the test well?

A. They frequently do.

Q. I take it, then, Mr. Paine, that your valuations of the subject properties are based entirely upon your assumption that no promising indications were obtained in the course of drilling the Faria well?

A. That is a far statement. [986]

Q. With respect to the transactions that you have referred to as having taken place in northern California, which are transactions you considered as one of the factors in arriving at your opinions, will you state, Mr. Paine, whether it is not true that in each and every case of the transactions referred to by you you were dealing with a situation where an oil or gas operator was trying to lease properties from landowners for the purpose of putting the leases together on some structure that he suspected might be there, and thereafter testing that structure?

A. Generally.

Q. Can you tell us of an incident or a transaction where the oil operator or the gas operator

(Testimony of Paul Paine.)

went out and got together a group or block of leases from the landowners and paid the landowners \$5.00 or \$10.00 an acre bonus, plus the royalty, and then having gotten the leases together in the form of a community lease, proceeds to drill a well, and before completing the well sell the leases in the block to another operator?

A. I can't answer that, because I do not know of any situation where a block was gotten together in which the gas operator paid as high as \$5.00 to \$10.00 an acre for all the acreage.

Q. Do you know of any block gotten together by the operator where the operator paid nothing originally to the landowners and thereafter sold the block to another operator?

A. Transactions of that kind have taken place. I am thinking [987] —no, I do not know of some definite one.

Q. I take it, then, it would be a fair statement to say that the transactions referred to by you were transactions occurring in the initial stage of the promotion of a drilling job or getting together of a block of leases?

A. No, the transactions also relate to the availability of property where wells have been drilled, have had gas blowout, and then have been available for further acquisition and have been abandoned and quitclaimed by the operators.

Q. I think I understand you, Mr. Paine. I take it, then, that such properties that you now refer to would be properties which had originally been

(Testimony of Paul Paine.)

leased by the promoter and gotten together on the original structure, is that right, and might still be available? A. Yes.

Q. Would they not normally be off the structure in such a case? A. No, not necessarily.

Q. But reasonably so, you could say that they would be off the structure?

A. No, they are right on the structure when a well has been drilled and had a large blowout of gas.

Q. Do you know of a single transaction or any transaction in northern California where a landowner owning property on a structure which was in the course of being tested for natural gas and in the course of which a blowout occurred of natural gas, and then the landowner sold his lease or royalty interest on his property?

A. No, I do not. [988]

Mr. Scampini: I think that that is about all. That is all. Thank you.

Mr. Bourquin: Nothing further from Mr. Paine. Thank you, Mr. Paine. The Government rests, your Honor.

Government Rests

Mr. Scampini: We have a very short rebuttal, if I may proceed, your Honor.

BYRON NORRIS

called as a witness by defendants in rebuttal; and having been previously duly sworn, testified as follows:

Q. (By the Clerk): State your name for the record, please? A. Byron B. Norris.

Direct Examination

Q. (By Mr. Scampini): Mr. Norris, as the engineer in charge of drilling the Faria well, have you any knowledge of the penetration of any fault in the course of drilling the Faria well?

A. I do not have any knowledge.

Q. Would the fact that the well penetrated a fault in the course of it being drilled reflect itself in any way?

A. Yes, it would reflect itself in the cores and also on the Schlumberger.

Q. Did you find any evidence of any such faulting in any of the cores? A. No.

Q. Do you find any evidence of any faulting on the Schlumbergers? [989] A. No.

Q. Is it your opinion that the well did not cross a fault in the course of drilling the well?

A. It is my opinion that it did not cross a fault.

Q. Have you formed any opinion based upon your knowledge of the geology and the information that you had of the drilling of the well as to whether or not the cretaceous formation had been contacted prior or above 4,975 feet?

A. I do not believe the cretaceous formation was ever contacted in the Faria No. 1 well.

(Testimony of Byron Norris.)

Q. Is it your opinion that you were bottoming in the Martinez formation?

Mr. Bourquin: I submit this was all gone into with the witness on his prior examination to the same effect. I do not believe it is proper rebuttal.

Mr. Scampini: It has been forcefully denied by Professor Taliaferro, and I think I am entitled to cover the matter in rebuttal.

The Court: Of course, you are entitled to take up any new matter.

Mr. Scampini: It is not new matter.

The Court: If the witness is reiterating a statement he made, it is not proper redirect. I am not sure about that particular subject. If it is not too lengthy, I would be inclined to admit it, because it is too difficult to go back [990] and find all the statements the witness made on direct.

Mr. Bourquin: I thought he said the same thing before.

The Court: It will not do any harm. I will allow it.

The Witness: Will you repeat the question?

(Question read.)

A. It is.

Q. (By Mr. Scampini): Have you any opinion as to how many feet of Martinez formation had been penetrated at 4,975 feet?

A. It is my opinion that only a few feet, possibly a hundred feet. I base that on the fact that we would expect the McDonald Island sand, which

(Testimony of Byron Norris.)

I believe we contacted in the top of the Martinez.

Q. Have you any opinion as to how many feet of Martinez formation underlay the Faria well below 4,975 feet? A. I have.

Q. What is your opinion?

A. May I step to the map here? This map will do. We have several ways of approaching that, other than what has been used in the well.

Q. This side, Mr. Norris, so the jury can see what you are doing.

A. Take this map here, and this being the well, the area down between the well and the town of Martinez has been gone into at considerable expense in Ried's *Geology of California*. At this point he places the thickness of the Martinez at 1,700 feet through the area in which the well is located. J. A. Taft has made a survey. That survey was used [991] by Professor Taliaferro in making his section which is found in Bulletin 118. In that survey Mr. Taft gives the thickness of the Martinez in this very area at 700 feet.

Moving over to the field to the right, the Rio Vista, we find the thickness of the Martinez at 1,257; in McDonald Island we find a thickness of 1,590 feet. Those figures are taken from Bulletin 118.

Q. And what is Bulletin 118?

A. It is a Division of Mines bulletin of the geology of California. It was pointed out the thickness of the Martinez would thin in this direction, but I would like to point out in the Rio Vista

(Testimony of Byron Norris.)

area it is much thinner than McDonald Island—and in my opinion it would thicken in this direction, rather than thinning. If you take a section right through the well—here is 1,500 feet here, 700 here, and 1,590 here, I think it gives a fair idea of what you might expect as the thickness of the Martinez at the well location.

Q. Mr. Norris, you have examined the map of Professor Taliaferro, which is U. S. Exhibit W, have you not? A. I have.

Q. Do you agree with Professor Taliaferro's placing of the axis of the antiline, which he says is approximately 2,500 feet from the location of the Cal Bay well? A. I do not.

Q. Have you formed any opinion as to whether or not he is in error on that conclusion?

A. I believe that he based his conclusion mainly on the fact that he was not able to find any [992] southwest dips at or near the well.

Mr. Bourquin: Your Honor, I move that the witness' answer go out as not responsive, expressing an opinion as to what the other witness based his opinion. I think the jury can be the judge of that.

The Court: I think that is right, Counsel.

Mr. Scampini: Yes, your Honor. I think that is right.

Q. Now, Mr. Norris, will you please state your reasons for concluding that the axis of the anticline was at the location selected by you for the drilling of the well?

(Testimony of Byron Norris.)

Mr. Bourquin: I object to this, your Honor, as not rebuttal. That was the very purpose of this witness, as I understood it, being called in the first place, and that subject was fully gone into.

The Court: I think counsel's objection here is good. The witness delineated at considerable detail, if my memory serves me correctly, where the axis was and why he fixed it there. It does not do any good to repeat it. The vice of that is the Government could put on their men and they could repeat their statements again, and we would never be finished with the case. I think that is a valid objection. I will sustain it.

Q. (By Mr. Scampini): Mr. Norris, just one more question or two, perhaps. With respect to the condition of the well after the blowout—you are familiar with the condition of the [993] well after the blowout, aren't you? **A.** Yes, I am.

Q. You know or knew at what depth the casing had collapsed, do you not? **A.** Yes.

Q. You knew exactly what the condition of the casing of the well from the surface to the place where the casing had collapsed was, don't you?

A. I do.

Q. At what depth do you state the casing collapsed?

A. Well, the casing collapsed at approximately—

Mr. Bourquin: Your Honor, I do not think this is proper rebuttal. What is this the rebuttal to?

Mr. Scampini: The condition of the well insofar

(Testimony of Byron Norris.)

as it can be used by any prospective buyer of the leasehold, in rebuttal to the testimony of Mr. Paine and Mr. Armstrong to the effect that the well could not be used.

Mr. Bourquin: If that is the purpose and it is limited to that and confined to that, I will withdraw the objection.

(Question read.)

A. (By the Witness): I believe I started to answer that. So far as I know, the casing collapsed approximately at the window. The true condition of the well is, the drill pipe is reported to be topped at 4,134, which would leave approximately 4,100 feet of effective hole. That hole is cased with new 7-inch casing.

Q. In your opinion would any prospective gas operator acquiring or intending to acquire the leasehold estate of Cal Bay [994] Corporation, use the Faria well down to 4,100 feet for the purpose of continuing drilling?

A. Yes, and may I explain?

Q. Yes.

A. It so happens that in the production of gas it is not necessary to have a large liner or casing through the gas zone. In Rio Vista they use from five and a half inch down to three and a half inch, so that it would be perfectly possible to put a window in this pipe and drill on down to the objective, which should be about 4,970, the gas sand that was tapped, and complete that well, and I

(Testimony of Byron Norris.)

believe any prudent operator would consider the fact that he had new casing and an effective hole to 4,100 feet in considering this property.

Mr. Scampini: No further questions. [995]

Cross-Examination

By Mr. Bourquin:

Q. On that subject, do you know how long the Cal Bay people required to get out of the first hole that was messed up and to arrange and place the whipstock and start over again at forty-one hundred feet and something?

A. I don't know the exact time, no. I have it in the log.

Q. Well, look and see.

A. They did considerable piping.

Q. Look and see if they didn't mess the old hole, the first hole, break down in about August, August 15, and worked into whipstocking until October 15 before they commenced drilling the new whipstock hole.

A. My record shows they started the fishing job August 22, 1944.

Q. When did they stick in that hole?

A. A three-inch drill pipe was pulled in two.

Q. After they stuck? A. Yes.

Q. They pulled the drill pipe in two?

A. August 22, 1944.

Q. Was that the date of sticking or the date of pulling in two?

A. That is the date recorded here that they pulled it in two.

(Testimony of Byron Norris.)

Q. What is the date of last drilling shown in that hole?

A. I have a note here, August 28, drilled at 4,811.

Q. They stuck, then pulled in two, and then they went through all of the procedure to go out and whipstock and start over again from 4,100, did they not?

A. Yes. They are two separate jobs there. The fishing job was the recovery of the three-inch drill pipe that was stuck on the bottom of [996] the casing and then they had to put a window in.

Q. Then they had to start over again at a higher level? A. Yes.

Q. What level was that window?

A. I have a note here, "Milling window at 4,176."

Q. When did they accomplish that and get back to drilling from the window?

A. My log reads, "October 18 ran east and whipstocked, drilling ahead, making six and a quarter inch hole."

Q. Approximately two months, October 18—August 18 to October 15?

A. That is not exactly true, because the well was idle in September, from September 5 to September 29, according to my record. That was at the time of the change of the one-man crew to the three-man crew—one crew to three crews.

Q. When they messed the first hole they quit, the ones that were working, is that it?

(Testimony of Byron Norris.)

A. I don't know about that. The well was shut down for a period of time.

Q. Then they got back in——

Mr. Scampini: I desire to take exception to counsel's reference that they messed the hole. There isn't any messing of the hole. This accident that happened in the course of drilling the well would happen everywhere. The continuous reference that they messed the hole would seem to infer that they did it on purpose. [997]

Mr. Bourquin: I think the term speaks for itself. I am only asking the question so we can appreciate the time.

The Court: What is the next question?

Q. (By Mr. Bourquin): During that interval between the sticking in the old hole and the inauguration of the new hole, they brought in specialists, whipstock people, and others, didn't they?

A. Yes.

Q. They added to the usual expenses, didn't they?

A. Well, a fishing job usually is expensive. As far as I know, there was only one expert brought in there to do the fishing.

Q. On the question of the geology that you referred us to the map up here, you are telling us that from your studies of the geology there is some reason to disagree with the conclusions voiced by Dr. Taliaferro?

A. Yes.

Q. When did you come to the conclusion, Mr. Norris, about the presence of those formations and

(Testimony of Byron Norris.)

the depths of them that you have announced to this jury this morning?

A. Why, I had some of that data at the time I wrote the original report; some of it has been published since.

Q. Lett me read from your original report on that subject to you, April 20, 1942, page 2——

A. Was it April 20?

Q. Yes; April 20, 1942. A. All right.

Q. At the bottom of page 2, commencing with the paragraph I [998] quote:

“It is only in recent years that completion of Tracy, 1935, McDonald, 1936, Rio Vista, 1936, gas fields has caused the survey of the area for the production of gas. The gas production from these fields comes from the cretaceous formation.”

Have I read it correctly, Mr. Norris?

A. You have.

Q. That was your opinion of the matter at that time?

A. That was my opinion at that time. I might explain——

Q. Let me ask you, that was after you had studied the area for the purpose of projecting an exploration over there and reported the matter to the Corporation Commissioner to get permission to sell stock? A. That is correct.

(Testimony of Byron Norris.)

Q. Look at page 6 of that same report, the paragraph at the top of the page:

“The production from the cretaceous formation may accumulate in this structure from either north, south or east, so that a very extensive drainage is indicated. The presence of three producing gas fields from the cretaceous formation to the east of this area gives considerable interest to the gas possibilities of this structure.”

Have I read that correctly?

A. Yes, you have.

Q. That was your view of the geology at that time, was it?

A. It still is, as far as some of those fields are concerned. [999] I think you are unfair, Mr. Bourquin. Let's read all of it.

Q. Which are the three fields that you refer to, to the east? Do you not refer to the same three you have referred to in the earlier passage, Tracy, McDonald and Rio Vista?

A. Yes, Tracy is still——

Q. Let's point those out. Tracy is this little green field down here, isn't it? A. Yes.

Q. In the relative location there? A. Yes.

Q. McDonald Island is the red field over here to the east? A. Yes.

Q. Rio Vista also being red, the one to the northeast? A. Yes.

Mr. Bourquin: That is all.

(Testimony of Byron Norris.)

Redirect Examination

By Mr. Scampini:

Q. Mr. Norris, isn't it a fact that on April 20, 1942, all information available to the geologists with respect to the production sands of Rio Vista were thought to be the ones you accepted to be correct?

A. That was my opinion at that time.

Mr. Bourquin: That might be the witness' view, but we object to that as calling for an opinion and conclusion. He might accept any view. I ask the answer stand out.

The Court: It may go out.

Q. (By Mr. Scampini): Was that your opinion at that time? A. It was. [1000]

Q. Upon what factor is based your opinion of the information available to you?

A. The data available at that time. I might say that Bulletin 118 was not out at the time. Neither were the McDonald Island or Rio Vista written up for the Division of Oil and Gas.

Q. When were they written up and when did Bulletin 118 come out?

A. Bulletin 118 came out in 1943. Rio Vista was written up in 1944. I don't know about the McDonald Island date. It was written in Bulletin 118, though.

Q. Up to the time of Bulletin 118 coming out, is it not true that all information respecting the geology of Rio Vista and McDonald Island were kept secret?

(Testimony of Byron Norris.)

Mr. Bourquin: I object to that as calling for a conclusion of the witness. He is not qualified. It appears now he has studied only from published reports. I don't think it is proper redirect examination and I think it calls for an opinion and conclusion in a field for which no foundation has been laid.

The Court: Yes. It would open up a collateral matter that might be endless as to whether data was or was not secret in this case.

Mr. Scampini: No further questions.

Mr. Bourquin: That is all.

Mr. Scampini: I will call Mr. May. [1001]

The Court: Would you prefer to take the recess at this time? Is this a short witness?

Mr. Scampini: Well, I think I would like to take a short recess, then I have only about two short witnesses and can proceed to argue the case this afternoon.

The Court: Very well. We will take the morning recess at this time. Please bear in mind the admonition of the Court.

(After Recess.)

WILLIAM HERBERT MAY

called as a witness on behalf of the defendants in rebuttal; and having been previously duly sworn, testified as follows:

The Clerk: You have heretofore been sworn. Will you state your name for the record?

A. William Herbert May.

(Testimony of William Herbert May.)

Direct Examination

By Mr. Scampini:

Q. Mr. May, can you state where you were on the morning of November 29, 1944, at or about the hour of ten-thirty to eleven a.m. of that day?

A. I was at the Faria well.

Q. What were you doing at or about that time; that is the question.

A. Trying to bring the well under control.

Q. What were you doing with respect to trying to bring the [1002] well under control?

A. Closing the gate and pumping in heavier mud.

Q. Were you there when the well first began to blow out?

A. I was.

Q. What were you doing?

Mr. Bourquin: Your Honor, I think this has all been covered. It is not proper. There is no objection to the witness coming in to meet the objection of the other testimony that he was not there. Now, if he is going into what he was doing, I object to that.

Mr. Scampini: I am merely leading up to the point whether or not he was there.

The Court: All right.

Q. (By Mr. Scampini): Had you been there all morning?

A. Yes.

Q. When did you leave the premises that day?

A. Around six o'clock, supper time.

(Testimony of William Herbert May.)

Q. Do you know who were working of the crew day? A. Yes, I do.

Q. Were they present at the time of the blow-out? A. Yes.

Q. Who were they?

A. The driller's name was Parks; there was a man by the name of McBride, Marshall, Morris and Enwall.

Q. Was Mark Beaver anywhere near the premises?

A. Mark Beaver was the fireman. [1003]

Q. Did he attend to the boilers? A. Yes.

Q. Approximately how far from the derrick were the boilers located?

A. Oh, one hundred fifty to two hundred feet.

Q. In respect to the condition of the well after the blowout, are you in a position to state, or give an opinion as to whether or not the condition of that well from the surface to 4,100 feet was such that a prospective buyer of that leasehold could use the same? A. I am.

Q. What was the condition?

A. The condition of the well down to 4,158, which was the top of the window, was in very good, perfect condition.

Mr. Scampini: No further question.

Cross-Examination

By Mr. Bourquin:

Q. Mr. May, was that the same Marshall and Morris who were in court and who testified?

(Testimony of William Herbert May.)

A. I was not here the day they testified.

Q. Was it Thurmone Marshall? A. Yes.

Q. And what was Morris' name?

A. I don't know. They called him Blackie Morris.

Mr. Bourquin: Blackie Morris. That is all.

Mr. Scampini: No further questions. The defendants rest.

(Defendants rest.) [1004]

(The following motion was made by Mr.

Bourquin out of the presence of the Jury):

Mr. Bourquin: Your Honor, in connection with the motion we made the other day relating to the claim for severance damage, I would like to add a further basis for that motion, a kind of complicated one, the ground that the properties of the Cal Bay leased in 59 and 58 were not taken at the time of the taking of the other parcels, most of those were severances claimed. The two dates were, at the instance of the other side by stipulation, separated, so we have a taking of most, if not all of the parcels where severance is claimed, that is, that were involved in the taking in July, and no taking of the property of 58 and 59 until the following January. That, however, is not true of the Alvernaz parcel, because we did not take any of that. They have a severance claim, and their claim is related by the evidence to the taking of parcels 58 and 59, but as the others where it is not severed, like the little corner that came out of Geraldine Faria's property,

and the claim of Mary Maria—was it Mary? I am not sure—some of them have that involvement.

(Discussion.)

The Court: Suppose you see if you cannot work out a form of verdict as to the severance damage that would limit that.

Mr. Bourquin: We will work it out. [1005]

The Court: I would rather hear your arguments to the Jury on the matter of severance damage. I am not sure in my own mind whether the question there has to do with the weight of the evidence or is the sufficiency of it. It is a rather close question. It would be better to resolve the doubt in favor of submitting the matter to the Jury, because if there is a reasonable question as to whether or not your objection goes to the sufficiency of the evidence rather than the weight of it, or visa versa, I think perhaps the doubt should be resolved in favor of submitting the matter.

Mr. Bourquin: All right, your Honor, we will prepare it.

The Court: Is there anything else, Counsel?

Mr. Seampini: No, your Honor.

The Court: We will recess until two o'clock.

(Thereupon, at 2:15 Counsel for the defendants made the opening argument on behalf of the defendants, followed by the reply argument of the Government by Mr. Bourquin, after which an adjournment was taken until tomorrow, *Thursday*, February 7, 1947. [1006])

Friday, February 7, 1947

(Counsel for the Government and the Defendants resumed their arguments, and at 2:00 p.m. the Court instructed the Jury as follows):

The Court: Ladies and gentlemen of the Jury, it is very obvious to the Court the members of the Jury have been commendably attentive during these past several weeks to the evidence presented here. Many witnesses have testified, and some of the matters which were the subject of the testimony of the witnesses were perhaps somewhat difficult. The Jury in the Federal Court and the Judge are in a manner of speaking a team whose objective is to secure justice. Each member of the team has a part to play in that process. The Jury is the judge of the facts of the case. Ordinarily the Court is not permitted to invade the province of the Jury in determining the facts of the case. The Judge traditionally is empowered to advise the Jury as to the law to guide them in arriving at a just decision on the facts. The Jury has to take the law the way the Judge gives it to them. It sometimes happens that juries do not like the law, but be that as it may, it is the duty of the jury to accept the statement of the law that the Court gives. Otherwise the process of justice might very easily be abortive. Sometimes laws are unpopular and juries do not like to accept the statement that that is the law. [1007] Nevertheless it is their duty to so do.

Ordinarily the Judge does not comment upon the evidence in the case. I intend a little later to make some comment concerning one phase of the evidence in the case, and when I do so I will give the Jury appropriate instructions with respect to that matter,

During the course of the trial of the case the Judge has been required to rule in connection with legal matters. In doing so the Court has made comments perhaps with respect to the law. Likewise the Court has propounded some question to witnesses in this case. In doing so the Court was not intending to convey to the Jury any intimation as to what the Court thinks the verdict of the Jury should be, but did so only in carrying out the power, and indeed the duty of the Court to supervise the administration of the trial and to expedite it.

Now, ladies and gentlemen, this is a condemnation case. As I told you when you were impaneled, you were going to be appraisers, twelve of you, and our hope is that by the combination of twelve minds you may do as good, if not a better job, than one mind may do in coming to an appraisal. Personalities are not involved in a condemnation case. It does not make any difference who owns the property. This is a proceeding, as the lawyers say, *in rem*. It only concerns the property. Whether a man or a woman or a corporation or a [1008] group of people or a white man or a red man or a colored man owns the property is immaterial. The only question is what is the market value of the property. You may only consider the personalities involved insofar as you may be called upon to weigh the testimony of

the witnesses who are connected with the property who have testified. Other than that you are not concerned with people but only with property.

There are some general rules that are applicable to all civil cases which you may apply here in evaluating the testimony of the various witnesses. In the first place, you must exclude any sympathy or any prejudice that you may have or that may have been caused to come into your minds as the result of the trial of the case. To do so would be again to block the accomplishment of justice. Whether or not you believe the witnesses who have testified in this case and the weight to be attached to their testimony respectively is a matter for your sole and exclusive judgment, except that the Court may have one comment to make, to which I have referred, at a latter time.

A witness is presumed to speak the truth. We start out with the idea that when a man or a woman steps up into this chair that he or she is going to tell the truth. However, that presumption may be negatived by the manner in which the witness testifies by the character of his testimony, by contradictory testimony, or by the motives of the [1009] witness. In passing upon the credibility of the various witnesses it is your right to reject the whole or any part of the testimony of a witness or to discard and reject the whole or any part of it. If it appears to you and it is shown that a witness has testified falsely upon any material matter, you should distrust his testimony in other respects, and in that event you are wholly free to reject all of the testimony of the witness.

I have already told you that this is an action in condemnation. It was brought by the United States for the purpose of acquiring a large tract of land for the Navy for the purpose of installing an arsenal project in connection with the prosecution of the war. Now, in cases of condemnation, contrary to the usual procedure, while the United States *is* the plaintiff and brings the suit to condemn the property, when the owner applies to the court for a determination of the value of his property, he in effect becomes the plaintiff, and there then rests upon him the burden of going forward with the case, and he has the burden of proving the value which he asserts by a preponderance of the evidence.

The preponderance of the evidence means that the testimony on the part of the defendants as to the value of the land or property or interest taken must have greater weight in your opinion and more convincing effect than that of the plaintiff. If that burden of proving the value of the property by a [1010] preponderance of the evidence is not sustained, and if you find that the evidence is evenly balanced, and the preponderance to which I have referred does not exist in favor of the defendants, then the defendants must be deemed to have failed to have maintained that burden of proof. The preponderance of the evidence does not necessarily depend upon the number of witnesses who testify, but rather upon the character of the testimony and its probable truth or falsity. If one party to a suit has twenty witnesses and the other party has one, it still may be that the preponderance of the evi-

dence is in favor of the party who presents only one witness, because his testimony, that is, the testimony of the one witness, by virtue of its character, may be so much more truthful than the testimony of the twenty witnesses on the other side that the finder of the fact, the Jury in this case, may conclude that the preponderance is in favor of the side which produced only one witness. I cite that to you only to the point of making clear to you that numbers have nothing to do with the weight of evidence.

In determining the credibility of the various witnesses and the preponderance of the evidence you can take into account the following elements: the circumstances under which the witness testifies, his demeanor and manner on the stand, his intelligence, the connection or relationship which he bears to either party by employment or otherwise, the manner in which [1011] he might be affected by your verdict, the extent to which he is contradicted or corroborated by other evidence, if at all, and any other matter which reasonably sheds light upon the credibility of the witness. It is your duty to disregard any testimony which the Court has stricken out or any testimony to which an objection has been sustained. The attorneys have argued this case, as is their right and indeed their duty. In doing so they have referred to evidence in the case. If you find any discrepancy between the evidence testified to by the witnesses and that stated to be the evidence by the attorneys in their arguments, you will disregard the statements of the attorneys and take into account only the evidence as it was given by the witnesses.

In a condemnation case such as this you are not concerned with why the Government took this property. The United States has the power and the right in the public interest to take private property for public use at any time and in any place as the Government so decides, and every citizen owns his **property** subject to that superior power of Government to take it for public needs. If that were not the law, as I explained to you at the time of your impanelment, it would be impossible to have public projects. We could not have roads. We could not have public buildings. We could not have parks. We could not have all the vast number of projects devoted to public use unless there was a superior power which had the right to take private property for those purposes. [1012]

Of course, the power of eminent domain was exercised to a very great extent during the war. The Government took huge numbers of parcels of land in the prosecution of the war as the needs of the moment dictated. The warfare that we were engaged required the taking of innumerable kinds of civilian property for conversion into structures of a military or semi-military character. The extent and the exercise of such powers is not a matter of judicial concern, neither mine nor yours, but what compensation shall be awarded and the rules and standard applicable there to is a judicial function.

It was correctly stated to you by the attorney for the defendants that the Constitution of the United States provides that when private property is taken by the Government for public purposes it is a cen-

stitutional requirement that just compensation be paid to the owner, and that is equally applicable in time of war as it is in time of peace. It is therefore not your function to decide whether the Government has acted wisely or unwisely in taking this or any other property. It is not your function in effect to say, "Well, I'm going to make the Government pay for this property because I think they should pay plenty for it because the Government took it." Nor is it your duty to penalize the defendants or any of them if, forsooth, you do not like them or if you do not like the kind of business they or any of them were engaged in. That likewise is not your function. The only function that [1913] you have is to determine the just compensation for the property itself and the interest taken to be paid to those who were entitled to receive the same.

Now, just compensation means the equivalent in money of the interest taken so that the owner may be in the same position peculiarly he would have occupied had the taking not occurred. Just compensation in condemnation is determined on the basis of the market value of the property or interest taken at the time of the taking by the Government. Thus the market value becomes the measure of damage. The test is not value for special purpose. It is the fair market value in view of all the purposes to which the property or interest is naturally adaptable. It is the highest value in terms of money which the property or interest will bring if exposed to sale for cash in the open market in the community in which it is situated, with a reasonable

time to find a purchaser buying with full knowledge of all the uses and purposes to which it is adapted and for which it is capable of being used, the seller not being required to sell or the buyer not being required to buy at the time.

In arriving at the amount of the market value of the interest taken by the Government in this case, that is, the amount in dollars and cents of the market value, you are not to consider what the interest taken was worth to the Government, for to allow that element to enter into your deliberation [1014] would be to make the Government's necessity the owner's opportunity. In other words, neither need for selling nor need for purchasing should be considered or should be taken into account. The location of physical characteristics, the advantages and disadvantages of the property or interest which is the subject of the condemnation are proper matters to shown in evidence in determining market value. These are matters which naturally would be taken into calculation in forming a public and general estimate of the value of the property or interest taken and influence the minds of the sellers and buyers with relation thereto. Accordingly, to the extent that such matters are shown by the evidence, the Jury may properly consider the same in arriving at its conclusion as to the amount of the just compensation which should be paid.

You are not to consider what the property or interest taken was worth to the defendants or any of them or to the owners of the leasehold or to the owners of the royalty interest for speculation or

merely for possible usage, or what the defendants claim the property or leasehold interest or royalty interest was worth for such purpose, nor what it would be worth to the Government for military purposes or for other purposes. You are not to consider the price that the property or interest would sell or lease for under special or extraordinary circumstances, but only the fair market [1015] value if offered in the market under ordinary circumstances for cash, a reasonable time being allowed to make the sale.

The defendants in this case are not entitled to make a profit because the interests which they claim they have were taken from them by the Government. By that I mean that they may not obtain more compensation by reason of the condemnation proceeding than they would obtain as the fair market value of such interest if there had not been a condemnation proceeding. The Government's wartime necessity for the use of this property, for the particular purpose standing alone, cannot be considered in estimating the value of the property taken. Demand created by wartime necessity cannot be considered in estimating the value of the interest taken. Future income or speculative productive value contemplated is not a measure of condemnation value. Profits which might be deprived from devoting the property to a particular purpose depends so much on conditions that cannot be foreseen that they have no competency. Compensation cannot be awarded for loss of business. The mere fact that a business is conducted on a property which has been taken under

the right of eminent domain is interrupted or destroyed by the taking does not constitute a taking of property or interest for which the owner is entitled to compensation. Compensation is to be awarded for the taking of the property or interest itself as distinguished from any activity or business thereon carried [1016] on.

The title to the real estate as a whole is called in the law the fee simple estate, and the Government, when it took this property, took the fee simple estate. It took the entire title in and to the entire property here involved. It paid the defendants for the whole value of the property taken. But there was by agreement reserved between the defendants and the Government the right to have determined the so-called mineral value or right in the property.

In this case some of the defendants are owners of leasehold interests, that is, they are lessees under leases, and others are owners of the reversion. They are or were at least at the time the Government took owners of the reversion that is, they were the landlords and they had reserved to themselves, I think the counsel stated, a one-eighth interest in any minerals that might be discovered or produced upon the property. That means, then, ladies and gentlemen, that both the owners of the leasehold, that is, the lessee, and the lessor have a separate and distinct estate or interest in the mineral rights if there were any in these properties, and each of them is entitled to have fixed by the Jury the fair market value of their respective interests, if there was any fair market value attached to their respective inter-

ests. The sum of these two values is the full value of the mineral rights taken. Because you evaluate separately the interest [1017] of the lessee and the interest of the lessor does not mean that you can thereby award any greater sum in total than you would award if you were making an award for the combined interests of the lessor and the lessee. You start out with one hundred per cent. The lessee here had $87\frac{1}{2}$ per cent interest in the mineral rights. The lessor had $12\frac{1}{2}$ per cent. You can evaluate the $87\frac{1}{2}$ per cent and you can evaluate the $12\frac{1}{2}$ per cent, and when you get through your sum total cannot be any more than if you had started out by evaluating the one hundred per cent.

Now, the market value of these interests that you are to endeavor to fix, if you find that they have any market value, is as of the date of the taking by the Government. The Government took possession of Parcels 57 and 64 on July 24, 1944, and the market value of the interest taken in these parcels is to be determined as of that date. The Government took possession of Parcels 58 and 59 on January 15, 1945, and the market value of the interests taken in these parcels is to be determined as of that date.

One other matter, ladies and gentlemen, before I come to the matter of the opinion testimony. I have already instructed you that you are entitled to evaluate the rights of the lessor and the lessee separately subject to the limitations which I have stated. That means that mineral rights, if there be such here, are property which are subject to the payment of just compensation in the event of [1018] condemnation.

In this case, ladies and gentlemen, as happens in many of these condemnation cases, so-called expert witnesses have testified as to value. The opinion of a witness as to the market value of property or interest may be good, it may be bad, or it may be indifferent, depending upon how well qualified the witness may be to express the opinion which he gives. You are not bound to accept the opinion of any witness, and that includes as well the owner of the property, who by law is entitled to give his opinion as to its value. You must determine the facts for yourselves, and in so doing it is your province to weigh the testimony of each witness who has expressed such an opinion with reference to all the circumstances surrounding not only the property or the interest taken in itself but the familiarity of the witness with the property, and to determine from all such circumstances how well qualified the witness may be to express a true opinion of market value.

You may in your discretion reject the testimony of any witness who has expressed such an opinion if it appears to your satisfaction that such an opinion is not based upon such a thorough knowledge of all the facts and circumstances relating to the property or interest taken as to enable him to express a true opinion as to market value.

Sales of similar interests of mineral rights in proximity to the property here involved may be considered by you in judging of the weight of the testimony of expert witnesses. You [1019] your-

selves are to determine the just compensation to be awarded in the light of all the facts and circumstances, including your conclusions resulting, whatever they may be, from the testimony of the expert witnesses. In estimating the market value, and keeping in mind the testimony of the expert witnesses, you are permitted to exercise your own individual judgment as to values, particularly upon subjects within your own knowledge, that you acquired through experience and observation. You have the right to exercise, in other words, your own common sense in determining the value of the interest taken.

Ordinarily, ladies and gentlemen, the court, as I stated to you before, abstains from expressing opinions as to the weight of the evidence. However, due to the somewhat apparent complexities of this case, and in order to be of assistance to the jury in the proper administration of justice, I believe it is my duty to make the following comment to the jury: In the opinion of the court the values fixed by the expert witnesses produced by the defendants in this case appear to the court to be so exaggerated as to make the testimony of those witnesses incredible. The opinion that I have expressed is just the opinion of the court. A Federal judge is permitted to make such a comment to the jury. The jury is not bound by the opinion of the court. The opinion is expressed as a part of the instructions as to the law for such aid as the jury wishes to make of it in determining the factual question. [1020] The jurors individually and

collectively are entitled to disagree with the opinion of the court. You may have your own opinion and you can come to it. You are not bound in any manner in making a finding in accordance with the view expressed by the court. The reason why the court has expressed the opinion is that it appears to the court that there is no factual basis presented in the testimony of the expert witnesses for the defense upon which the opinion of value given by them can be said to rest.

Prior to the taking of the land in this case, ladies and gentlemen, the defendant Cal Bay Corporation, as you have heard from the testimony, had been engaged in drilling a hole on parcel 59. In determining the market value of the mineral rights, if any, in this parcel, you may consider the amount, if any, which the existence of this hole enhanced the market value of these rights. However, it is not within your province to evaluate the hole or to give any consideration to the cost of drilling the same or the reproduction cost thereof. You must determine, as I have already instructed you, what amount in terms of cash a willing buyer would have paid to a willing seller for the mineral rights in this parcel of land with full knowledge of all the facts, including all the facts having to do with the presence of and the drilling of this hole on the property. You are not at liberty to assess the value of the mineral rights if you find that they have a value and [1021] of the hole, and by a process of addition fix the total value of the mineral rights.

There has been some statement made to you as to severance damage. Severance damage may be very simply stated to be this: If you have a piece of property consisting of 10 acres and the Government takes five acres of it, if some damage results to the five acres that were not taken because the Government took five acres of your 10-acre piece, that damage to the part which the Government did not take from you is called severance damage, and that sometimes happens in cases. A property owner may have a piece of property that has a road into it or it has access to a river or a creek or it is located in certain proximity to a watershed; if the Government should come along and take of a 100-acre piece a part and thus leave the owner the remaining parcel without access to a road, a water supply and the like, the part that the Government has not taken would be damaged, and that is what we speak of generally as severance damage.

Certain of the defendants in this case have claimed severance damage to portions of the property not taken by the Government. Severance damages, according to the law, are never presumed to exist but they must be proved by a preponderance of the evidence, the same as any other claim. The severance damage must be based upon some real physical disturbance of a property right which naturally tends to and actually does [1022] decrease the market value of the property that is not taken. You are not to consider in this connection possible damage that would be uncertain, remote, speculative or imaginary, but only such elements as would tend

to reduce the market value of the portion that was not taken by the Government.

It has been stated to you by counsel during argument that unless compensated by a verdict of the jury the defendants will not be reimbursed for their efforts expended in connection with their gas exploration project. Such reimbursement, however, has no part in the scheme of just evaluation of the defendants' alleged mineral rights. Many explorations for gas and oil are made all over the world and in innumerable instances are unsuccessful. The Government, because of its exercise of its right of eminent domain to take this property, cannot be charged with the drilling or other expense of the defendants. It is only required to pay the market value as I have defined that term to you of the interest that was taken.

Another statement was made that I think I should comment upon because these matters might tend to becloud the actual limits of the authority of this jury in determining the amount, if any, of the value of the interest taken here.

Some comment was made to the effect that the fundamental issue was that the defendants should have been given the opportunity to proceed with their tests further, and that the [1023] taking therefore resulted in damage to them for that reason. I repeat to you again what I said, that the United States has a paramount right to take the property at any time in the public interest. It may take the property while a building is being erected. It need not give the owner any opportunity to complete the building. Its only obligation is to pay the market

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value of that which is taken. Likewise the amount that an owner invests in his property is not germane in determining the matter of market value. I may pay \$50,000 for a piece of property, perhaps yielding to the importunities of some glib salesman, and yet the market value of that property may be only \$10,000. If the Government takes that property, the Government is only required to pay the market value of \$10,000, no matter what I may have paid for it or invested in it, because by law just compensation always is only concerned with market value.

Now, ladies and gentlemen, counsel have referred to the different valuations that have been made in this case and each side has put a chart on the board. The court has taken the time to summarize the claims in a simple manner, and I have prepared a paper for the aid of the jury, so that they can see in simple form just what is claimed by each side in this case, and in convenient form, and I think I have checked and rechecked it, and I believe the figures are accurate in every respect. In the left-hand column of this document I have set forth the claims [1024] as made by the defendants, and I think the figures correspond precisely with the figures that have been stated by counsel in their arguments and in their proposed instructions to the court; and I have set them up by lessee's interests and lessor's interests, and by parcel numbers. Opposite them on the right-hand side of the page, I have set up the values as fixed by the Government. I have taken the highest values that were given by the Government opinion witnesses here

so that you may see exactly what their respective claims are. This paper will be given to you by the court to take with you into the jury room, not as evidence at all, but merely to aid the jury in having before them in concrete simple form what each side claims, so that you will not have to have recourse to the reading of a lot of testimony, and perhaps a laborious examination of many exhibits.

The total claims of values of the defendants are set forth at \$786,225, and the highest value as fixed by the Government with respect to those same claims is \$3,865.

In the case of severance damage the Government witnesses testified that there was no severance damage at all. The witnesses for the defendants testified as to severance damage, which is specifically set forth in this schedule, which you may take with you to the jury room.

We have also prepared for you some forms of verdict for your use, inasmuch as there is a number of properties involved [1025] in this action. There are five separate forms of verdict that have been prepared. I shall read each one to you so that you may determine, in connection with the court's instructions, what you have to do when you go in the jury room.

The first verdict refers to the Cal Bay Corporation, and it reads as follows:

"We the jury find the market value as of January 15, 1945 of the leasehold estate of the defendant Cal Bay Corporation in Parcels 57, 58 and 59 to be the sum of blank dollars."

Where it says "blank dollars" you will put in there such sum as you may find to be the proper market value. If you find that there is no market value, you will write "Nothing" there. Otherwise, you will put in there whatever sum you conclude is the proper market value.

This same form of verdict further reads:

"We further find severance damage to the leasehold estate of the defendant Cal Bay Corporation not taken by the United States of America to be the sum of blank dollars,"

and there you will insert such sum, if any, that you think should be awarded for severance damage to the Cal Bay Corporation.

The next form of verdict has to do with the defendant Maria Faria, and it reads as follows:

"We the jury find the fair market value on July 24, 1944 of the royalty interest of the defendant Maria [1026] Faria under the leases on Parcel 59 to be the sum of blank dollars. We further find severance damage to the royalty interest of the defendant Maria Faria not taken by the United States of America to be the sum of blank dollars."

You will fill in, as you see fit or not, the blanks in that verdict, as I have heretofore stated.

The next form of verdict reads:

“We the jury find the market value as of July 24, 1944 of the royalty interest of the defendant Edward Faria under the leases on Parcel 58 to be the sum of blank dollars.”

The next verdict reads:

“We the jury find the market value as of July 24, 1944 of the royalty interest of the defendant Mae E. Roche under the leases on Parcel 57 to be the sum of blank dollars.”

The last verdict or form of verdict reads:

“We the jury find the market value as of July 24, 1944 of the leasehold estate of defendant Joseph Faria, Jr. in Parcels 59 and 64 to be the sum of blank dollars. We further find the severance damage to the leasehold interest of the defendant Joseph Faria not taken by the United States to be the sum of blank dollars.”

And you may fill out those blanks in the manner I have indicated. [1027]

Ladies and gentlemen, if you can conscientiously do so you are expected to agree upon a verdict in this case. The matter which has been submitted to you for your consideration is an important one and a serious one, as you can see. You should bring to your consideration of this case your earnest desire to do what is just and proper, with due regard to both the United States and the defendants here. If any one of you should be convinced that

your view of the case is erroneous, do not be stubborn and do not hesitate to abandon your own view under such circumstances. On the other hand it is entirely proper to adhere to your own view if after a full exchange of ideas you still believe you are right. That is for the reason that both parties are entitled to the independent judgment of each juror.

You should not, in arriving at your verdict, resort to the so-called pooling plan or scheme. That is a scheme whereby each juror would write down the amount he or she thinks should be awarded and then add up those amounts and divide it by 12 and thus arrive at the amount of your verdict. Your verdict should be based upon evidence and not upon chance.

In that connection I call your attention to the fact that there is a staggering divergence of opinion between the values testified to by those who have testified on behalf of the defendants and those who have testified on behalf of the Government. The total figures of the defendants' claim is \$786,000. [1028] The total figures of values asserted by the Government is \$3,865. It would be equally improper for you to fix a point midway between these two figures and feel that you had done justice by so doing. You may only arrive at the amount, if any, that you find upon the basis of the evidence in the case and by no plan of chance or like scheme.

Ladies and gentlemen, when all of you agree to a verdict it is the verdict of the jury. You are cautioned that you should not return to the court-

room with a verdict unless it is the unanimous verdict of all of you. When you retire to the jury room to deliberate you will select one of your number as foreman or forewoman, as the case may be, and he or she will represent you as your spokesman in the further conduct of this case in this court. After you have retired to deliberate and have organized and selected a foreman, if there are any exhibits or schedules or other documents that are lawfully before the court which you desire to have sent to you, you may so advise the court and they will be sent to you.

Do either counsel wish to note any exceptions?

Mr. Scampini: Your Honor, I wonder if it would be proper to submit some copies of the exhibit showing the various parcels that I have?

The Court: Any exhibit that the jury wishes to have, or if they want all of them, after they have retired to deliberate, if they will so advise the court we will send in to them anything [1029] they want. Does the Government wish to note any exceptions to the charge?

Mr. Bourquin: No exceptions to the charge, your Honor.

The Court: Counsel for the defendant?

Mr. Scampini: We have certain objections.

The Court: Would you prefer me to excuse the jury so that you may make your exceptions in the absence of the jury?

Mr. Scampini: Yes, your Honor.

The Court: Ladies and gentlemen, I will ask you to retire for a brief moment at this time. The

instructions of the court are not yet complete. The case is not yet submitted to you for decision. You are still under the admonition that you are not to discuss the case among yourselves or with any other person, nor to form or express any conclusion until it is finally submitted to you.

We take the jury to the jury room at this time, and the bailiff will bring you back in a short time for further instructions if there be such.

(Thereupon the jury retired from the courtroom.) [1030]

(The following proceedings were out of the presence of the jury:)

Mr. Chamberlin: If the Court please, at this time we have certain objections to the instructions given, and also to the failure of the court to give other instructions. Of course, as the charge is read to the jury or stated to the jury it is pretty hard to put your finger on the particular instructions that your Honor is giving at the time. In this case they did not follow, I do not believe, any of the forms of instructions given by either party, but substantially most of the instructions that both sides proposed. Of course, our main objection, your Honor, is to the instruction which started out with language, "Ordinarily the court abstains from expressing an opinion," and thereafter your Honor expressed an opinion upon the credibility of certain expert witnesses and also upon the evidence in the case. Our objection to that particular instruction—and it was quite a long one—is that it exceeds the

bounds of proper comment by a court in the instructions and amounts to taking sides. We object to the instruction as prejudicial error, on the ground that it denies the defendants in this action due process of law under the Fifth Amendment to the Constitution, on the ground that it is repugnant to the Fifth Amendment to the Constitution, providing that a defendant is entitled to just compensation in condemnation cases. We object to it on the ground that it is [1031] repugnant to the Sixth Amendment to the Constitution in that it denies the defendants in this action a fair trial by jury.

Your Honor in opening the charge said that ordinarily the court had no power to determine facts. We object to that language of the court upon the ground assigned and would intimate that the court did have such power in this case.

The Court: I said ordinarily the judge does not comment on that.

Mr. Chamberlin: You added that afterwards, your Honor.

The Court: Mr. Reporter, will you read that part of the instructions?

(The Reporter [reading]: "Ordinarily the judge does not comment upon the evidence in the case. I intend a little later to make some comment concerning one phase of the evidence in this case, and when I do so I will give the jury appropriate instructions with respect to that matter.")

Mr. Chamberlin: It was before that.

(The Reporter [reading]: “Ordinarily the court is not permitted to invade the province of the jury in determining the facts of the case.”)

Mr. Chamberlin: Your Honor used the word “ordinarily,” which would intimate to the jury there is an exception in this case. A little later on, along the same line, your Honor said to the jury that they were the sole and exclusive judges of the facts, and then your Honor said that you would comment [1032] later on certain features.

The Court: You may make your exception. I think I fully covered that.

Mr. Chamberlin: There were two preliminaries, as I say, in the instructions to which we object on the same grounds that I objected to the main instruction. We also object to the instructions which were much farther along in the case, and which your Honor prefaced, I believe, with “Certain arguments were made before the jury.” Your Honor then proceeded to answer those arguments. We object to those instructions in those regards on the ground they exceed the bounds of proper comment on the evidence, that they take sides with the plaintiff in this case, and for that reason is prejudicial error.

We also object to the refusal of the court to give certain instructions. Your Honor placed the burden of proof upon the defendants, and properly so, but your Honor refused to give our instruction No. 22. Instruction No. 22 is to the effect that while it is incumbent upon one who assumes the affirm-

ative of the issue, thus having the burden of proof, to prove his allegations by a preponderance of evidence, this rule does not require demonstration. As we have the burden of proof in this unusual case we think your Honor was prejudicial to the rights of the defendants in your Honor not giving that instruction. [1033]

Then your Honor gave the instructions on expert witnesses, commencing upon the expert witnesses for the defendants, on the theory that their estimates were extravagant. We think we were entitled to our instruction No. 44 to this effect: If you find and believe from the entire evidence that any of the witnesses as to value——

The Court: I have No. 44. I do not think it will be necessary for you to read it. I will identify it by number.

Mr. Chamberlin: I object to the refusal of the court to give that part of Instruction No. 44 which reads,

“Or, on the other hand, have minimized or diminished the value.”

In other words, the instruction as given magnifies the over-statement and we have no comment upon under-statement.

We also object to the refusal of the court to give our instruction No. 45. Your Honor covered that largely, but you omitted a cautionary provision, that is, the second paragraph of our Instruction No. 45, whereby the jury should have been told that they were entitled to consider your Honor's remarks no

greater in weighing the testimony of the witnesses than the arguments of counsel. Your Honor neglected to give that.

We also object to the refusal of the court to give out instructions Nos. 40, 41, and 43, those instructions having to do with the market value of the oil and gas leases. We object upon the ground that the refusal to give those instructions [1034] is prejudicial error.

Is there anything else you can think of?

Mr. Scampini: I do not think so.

Mr. Chamberlin: There is one feature here, your Honor, and that is throughout the instructions to the jury you have drawn the distinction between a leasehold interest and the royalty interest. The stipulation which was entered into with the Government—I am objecting in this regard to the forms of verdict which your Honor proposes to submit to the jury—the stipulations which were entered into between the defendant and the Government reserved mineral rights. The value to be determined at this trial is the mineral right of certain defendants.

The Court: There cannot be any confusion as to what is referred to.

Mr. Chamberlin: Yes, your Honor, for the reason that under those leases they had a reversionary interest. They had a way of getting back the entire mineral rights in addition to the royalties in case the lessor ceased—

The Court: I do not think there can be any confusion on that. That is merely a convenient way to refer to the interest. It has been so referred to—

Mr. Chamberlin: We feel if it were only a matter of royalty, some question might come up as to whether we would be entitled to severance damage. If it is a mineral right [1035] we do not feel that way.

Mr. Bourquin: May I object to this in the interest of keeping the record straight? I thought we had agreed on the forms of these verdicts.

Mr. Chamberlin: I submitted some to the clerk——

The Court: The court was probably responsible for that because I was afraid that the jury might be confused when we were talking about these landlords and still referring to them as mineral interests, and they would not know that was the same kind of interest as the other defendants. I did that for the purpose of distinguishing them, that is all. I do not see any possible prejudice.

Mr. Bourquin: It followed the pattern of the testimony introduced by the defendants.

The Court: Very well, all the exceptions of counsel will be noted. You may bring the jury in.

Mr. Scampini: Counsel has referred to the Sixth Amendment of the Constitution as guaranteeing the right of trial by jury, and I think he probably forgot the sequence. I believe it is the Seventh Amendment. I desire the record to so show.

The Court: I think my figures are correct in those statements.

Mr. Scampini: They are correct.

(The jury returned to the courtroom.) [1036]

The Court: Let the record show that the jurors are all present. Ladies and gentlemen, you have had to walk back to the jury room and back here again, but it was necessary, and I brought you back for the purpose of now telling you that the instructions of the court are completed and the case is now submitted to you for decision. You may therefore now retire and proceed with your deliberations.

(Thereupon at 3:00 p.m. the jury retired from the courtroom to deliberate upon a verdict.) [1036-a]

Friday, February 7, 1947

(The jury returned into court at 9:20 p.m.)

The Court: Let the record show the jurors are all present. The court is in receipt of the following communication from the jury:

“On behalf of one juror a request is made that the instructions of the Judge to the jury be reviewed.

“WILLIAM H. OWEN,
“Foreman.”

Mr. Foreman, do I understand that the jury requests the court to re-read the instructions to the jury?

The Foreman: I think that is correct, your Honor. One of the jurors is undecided and feels if the instructions——

The Court: If it is the request of the jury the Court [1037] can either re-read the instructions to

the jury or if counsel have no objection, the reporter has already typed up the instructions, and as we do in some cases, I can give you the instructions and you can return with them to the jury room and read them for yourselves. Is that agreeable to counsel?

Mr. Scampini: We have no objection.

Mr. Bourquin: Yes, your Honor; that is all right.

The Court: I have not had a chance to check them over, counsel, but they are as the reporter has presented them to me. I will have to remove from them the portion of the proceedings that occurred while the jury was absent.

Mr. Scampini: Yes, your Honor.

The Court: It is stipulated by both counsel that the court may give the transcript of the instructions as furnished by the reporter to the jury?

Mr. Scampini: Yes, your Honor.

Mr. Bourquin: Yes.

The Court: I will say to the jury what the clerk is removing from the transcript which I gave to him are the proceedings which took place in the absence of the jury, and are not part of the instructions of the court.

Mr. Scampini: It starts at page 1030 of the transcript, your Honor.

The Court: I think it starts at page 1031. doesn't it?

Mr. Scampini: The portion being taken out.

The Court: Yes. You can hand it to the jury. You may retire, ladies and gentlemen.

(The jury retired at 9:25 p.m. and returned into court at 10:50 p.m.)

The Court: Let the record show that the jurors are all present. The court is in receipt of the following communication from the jury:

“This is to inform your Honor that eleven of the jurors have arrived at a verdict but one juror continues to base his opinion on factors that, to the other eleven jurors, seem to be contrary to your Honor’s instructions to the jury. We ask the advice of the Court.

“WILLIAM H. OWEN,

“Foreman.”

The Court cannot advise the jury at all. In view of what the jury has stated, and inasmuch as the jury has advised the court of a division of the jury on some undisclosed matter, there is no direction that the court can give the jury, and under the circumstances I don’t find that it would be proper, having this information from the jury, to do anything except perhaps to discharge the jury, for were I to give any advice to the jury or assume to give any advice to the jury the criticism might be properly made that the court was attempting to coerce or otherwise compel the bringing in of a verdict by some advice that the court might give concerning a matter which is not disclosed to the court in this communication. [1039] The statement that the jury has furnished to the court is a most unusual

one. I take it that all of the jurors were informed and knew the contents of this communication?

The Foreman: Yes, your Honor; it was read.

The Court: This communication was written and known to all the jurors?

The Foreman: Written at the request of the jurors, themselves, your Honor.

The Court: It raises quite a serious question. It raises a question that might involve a violation of law. That is why I was so particular to ask whether or not all of the jurors were aware of this communication being sent to the court.

The Foreman: Yes, your Honor; each and every juror is fully aware of it.

The Court: If the statement of the jury is correct there is nothing that the court can do with respect to a verdict in the case, but I will say that in view of the nature of the communication it will become the duty of the court to cause an investigation to be made, because it is the duty of all citizens who are summoned for jury duty to obey the instructions of the court. It cannot be disregarded, and a violation of such duty entails serious consequences which the court will, of necessity, be called upon to investigate. I say that because it would be impossible for me now, having received [1040] this communication from the jury, to accept a verdict from the jury.

Mr. Bourquin: I am reminded by my associate that this jury has been out from three o'clock to six o'clock, and again from after dinner until this hour. Does your Honor feel that in the nature of

this case that this jury over this time has given the ultimate time to ascertain that they are unable to agree upon a verdict? I offer that suggestion because this case has taken, I know the other side will agree, a great deal of time to try. I am talking about the fact that if this jury can agree we would rather that they should agree, whatever their verdict. If they cannot agree we are going to have to spend the same time in presenting it again. That works on either side.

The Court: I suppose counsel on the other side would feel the same way about that.

Mr. Scampini: Certainly; no question about it.

The Court: Well, if both counsel are in agreement I will say this to the jury, and if there is any objection to what I say you note it, it is the duty of the jury to obey the instructions of the court as to the law of the case, and if the disagreement between the jury arises because of a failure to obey the instructions of the court, then that is a misfeasance on the part of the juror who fails to follow the instructions of the court. Just that simple statement. If under those [1041] conditions both sides are satisfied for me to ask the jury to retire and see whether they can still reach a verdict, I will do so, but I would not do so unless both sides are agreeable to that.

Mr. Bourquin: We are satisfied, your Honor. This is only one of seven or eight hundred cases that we have had to try in this connection.

Mr. Scampini: And I am satisfied, your Honor, subject only to the general objections that we raised

earlier in the afternoon, of course, as to the instructions.

The Court: Well, I will instruct the jury to go out once more and try to agree upon a verdict, and you may then advise me of what conclusion you come to.

(The jury retired at eleven o'clock p.m., and the following proceedings took place in the absence of the jury:)

The Court: I may say, Mr. Scampini, and Mr. Bourquin, that a very unusual situation has presented itself in this matter, and I don't want to be in a position of attempting to coerce a verdict at all in this case, and I would not have asked the jury to go out again unless both sides were agreeable to doing that. Apparently, the disagreement between the jury does not arise as to some factual matter, but the statement is made apparently by one or all the jurors that one juror has expressed an opinion on matters that are contrary to the judge's instructions to the jury. I draw from that the conclusion either that some juror is considering evidence [1041-a] that the court has told them not to consider, or is not considering the evidence that the court has told them could be considered, or is coming to some arbitrary conclusion that is contrary to the instructions, and, of course, as I have said to the jury, that is a serious matter. That is a matter that would involve definite misconduct of a juror. For that reason I would not send the jury out again unless counsel were satisfied. You will have to take

a chance on what happens by the verdict of the jury under those conditions.

Mr. Scampini: I assume by my consenting to the jury being sent out again it will be deemed we have not waived any of the exceptions heretofore stated.

The Court: No, of course not. This is without prejudice to any exceptions counsel have taken to the court's charge.

Mr. Scampini: I would not be bound by the verdict of the jury merely because we agreed.

The Court: No. I am only referring to what the court just did in asking the jury to go out again.

Mr. Bourquin: We are willing to agree on the record, your Honor, that counsel's objections to the charge of the court may be preserved, notwithstanding this incident, but it will be as it appears from your Honor's reading of the note, that this is not a disagreement on the facts, but the law, then in view of the fact that we have the same approach on these cases that we have carried over for many years, we [1042] would like this jury to deliberate further; we believe it is warranted in view of the nature of the case.

The Court: The hour is getting late. Suppose that within some reasonable length of time it might be indicated that the jury could still reach a verdict if it had more time, how do counsel feel with respect to the matter of giving the jury the proper instruction to go to their homes tonight and resume deliberations tomorrow morning?

Mr. Scampini: In view of the incident I would rather suggest if the jury fails to agree that your

Honor may, within the next half hour—I think it would be better to discharge the jury. That is my view of the case.

Mr. Bourquin: I feel this way about it: If it were a disagreement of the jury on a factual matter, I would not express what I am about to say, but realizing this is a civil case and it may be an unusual thing in our experience that a civil jury should be asked to deliberate over the next day, but we have a precedent in this court. About twelve years ago I participated in a trial before his Honor, Judge St. Sure, where we tried a technical question like we tried in this case, where we tried a case that took us three weeks to present. It was a case, a damage case against Henry Ford and the Ford Motor Company, because of an alleged defect in the character of Steel that he had put forth in one of the first Model A's that came out. It had collapsed and what-not. It became a matter [1043] of very scientific testimony, highly technical, and after three weeks of that trial the jury was sent to deliberate in the early afternoon. They were sent to dinner and returned and resumed their deliberations, and they came in about ten o'clock with the word that they were unable to agree. Judge St. Sure sent them out and keep them out later, did not have any hesitancy on his part. I don't recommend that to your Honor as anything except as precedent.

Mr. Scampini: I have no objection either way.

The Court: I think I will reserve decision on what I should do in the matter until I hear further from the jury. We will take a recess.

(The jury returned into court at 11:15 p.m.)

The Court: Let the record show that the jurors are all present. Mr. Owen, has the jury agreed upon a verdict?

The Foreman: Yes, your Honor; we have a unanimous verdict.

The Court: Will you hand the verdicts to the deputy marshal, please?

The Court: The Clerk will read the verdicts.

The Clerk: Ladies and gentlemen, harken to your verdicts as they shall stand recorded:

“We, the jury, find the market value as of July 24, 1944, of the royalty interest of defendant Mae E. Roche, under the leases on parcel 57, to be the sum of \$60. William H. Owen, Foreman.”

So say you all to that? [1044]

The Jurors: We do.

The Clerk: “We, the jury, find the market value as of July 24, 1944, of the royalty interest of defendant Maria Faria under the leases on Parcel 59, to be the sum of \$2312.00.

“We further find the severance damage to the royalty interest of the defendant Maria Faria not taken by the United States of America to be the sum of \$ none. William H. Owen, Foreman.”

So say you all?

The Jurors: We do.

The Clerk: “We, the jury, find the market value

as of January 15, 1945, of the leasehold estate of the defendant Cal-Bay Corporation in parcels 57, 58 and 59, to be the sum of \$926.00.

“We further find the severance damage to the leasehold estate of the defendant Cal-Bay Corporation not taken by the United States of America to be the sum of \$ none. William H. Owen, Foreman.”

So say you all?

The Jurors: We do.

The Clerk: “We, the jury, find the market value as of July 24, 1944, of the leasehold estate of the defendant Joseph Faria, Jr., in Parcels 59 and 64, to be the sum of \$517.00.

“We further find the severance damage to the leasehold interest of the defendant Joseph Faria, Jr., not taken by [1045] the United States of America to be the sum of \$ none. William H. Owen, Foreman.”

So say you all?

The Jurors: We do.

The Clerk: “We, the jury, find the market value as of July 24, 1944, of the royalty interest of defendant Edward Faria under the leases on Parcel 58, to be the sum of \$50.00. William H. Owen, Foreman.”

So say you all?

The Jurors: We do.

The Court: Your verdict as read by the Clerk is unanimous; you have all agreed on the verdict, have you?

The Jurors: Yes.

The Court: Do counsel wish the jury to be polled, either side?

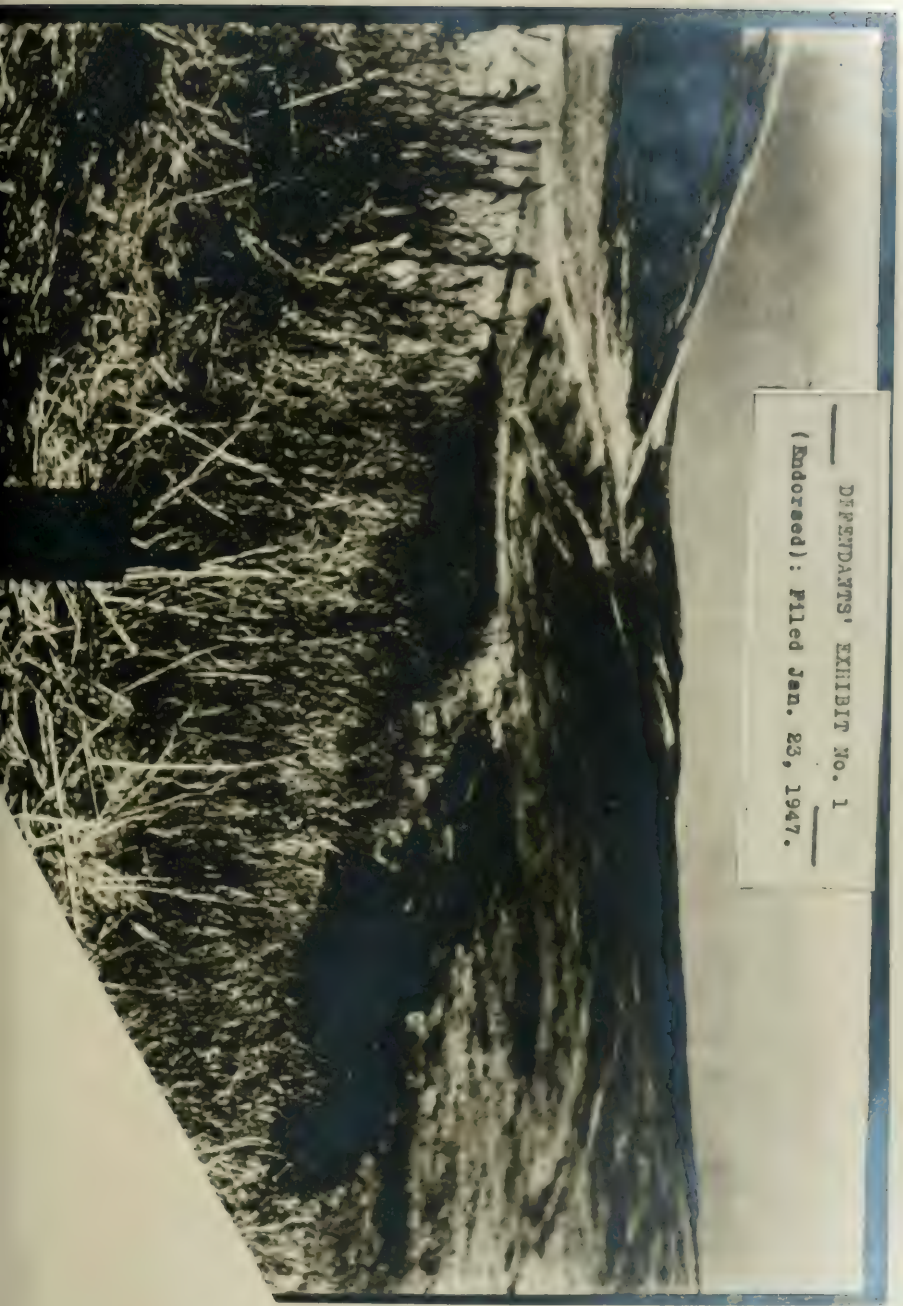
Mr. Scampini: I desire the jury be polled.

(The Clerk then polled the jury and all answered in the affirmative, and the jury was then discharged by the court.)

[Endorsed]: Filed April 4, 1947. [1046]

DEFENDANTS' EXHIBIT No. 1

(Endorsed): Filed Jan. 23, 1947.



DEFENDANT'S EXHIBIT No. 2

[Penciled Notation: 367.36 Ac. assigned to Cal Bay Corp. 73.51 retained by Joe Faria, Jr.]

OIL AND GAS LEASE

(86)

This Indenture of Lease, made and entered into this 11th day of Aug., 1941, by and between X Mary Faria of Concord, party of the first part, hereinafter called Lessor (whether one or more), and Joseph Faria, Jr., and Bud Hildebrand, party of the second part, hereinafter called Lessee.

Witnesseth: That the Lessor, for and in consideration of Ten Dollars, in hand paid, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of the Lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said Lessee exclusively, for the purpose of exploring, mining and operating for oil, gas and casing-head gas, and other hydrocarbon substances, and taking, storing, removing and disposing of same, and manufacturing gasoline and other products therefrom, with the right for such purposes to the free use of oil, gas or water from said land, but not from Lessor's water wells or ponds, and granting the right to build tanks, power houses, stations, houses for employees and such other structures (excepting refinery) as may be necessary or con-

Defendants' Exhibit No. 2—(Continued)

venient in its operations, together with rights-of-way, easements and servitude for pipe lines, power lines, telephone and telegraph lines, with the right of removing, either during or after the term hereof, any and all improvements placed or erected on the premises by Lessee, including the right to pull all casing, on all that certain tract of land situated in the County of Contra Costa, State of California, described as follows, to-wit:

Lot 2 Sec. 21 T2N R1W 38.72 Ac.; por. Lot 1 & SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 21 T2N R1W 76.64 Ac.; S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 21 T2N R1W & W 12 Ac. of S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 22 T2N R1W 92 Ac.

Lot 3 & Fract'l SE $\frac{1}{4}$ of Sec. 21 T2N R1W 155.51 Ac.; N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 21 T2N R1W 80 Ac.

and containing 440.87 acres more or less.

To Have and to Hold the same for term of twenty (20) years from and after the date hereof, and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom in quantities deemed paying by Lessee.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty the equal One-Eighth part of the value of all oil removed from the leased premises, after making the cus-

Defendants' Exhibit No. 2—(Continued)

tomary deduction for temperature, water, and b.s., at the posted market price in the district in which the premises are located for oil of like gravity the day the oil is run into pipe line or storage tanks, and in this event settlement shall be made by Lessee on or before the 20th day of each month for accrued royalty for the preceding calendar month; or at Lessor's option exercised not oftener than once in any one calendar year upon sixty (60) days' previous written notice, deliver into Lessor's tanks on the leased premises or at mouth of well to pipe line designated by Lessor, free of cost, Lessor's One-eighth part of said oil.

2. Lessee shall pay Lessor as royalty One-eighth of the net proceeds derived from the sale of gas from each well while same is being sold or used off the premises, and in this event settlement shall be made by Lessee on or before the 20th day of each calendar month for gas sold during the preceding month, but nothing in this agreement contained shall require Lessee to save or market gas from said lands, unless there shall be a surplus above fuel requirements and a market at the well for same. The Lessor to have gas free of cost from any gas well on the leased premises, for all stoves and inside lights in the principal dwelling houses on said land by making his own connections at a point designated by Lessee, the taking and use of said gas to be at the Lessor's sole risk and expense at all times.

Defendants' Exhibit No. 2—(Continued)

3. The Lessee shall pay to Lessor for gasoline or other products manufactured and sold by the Lessee from gas produced from any well as royalty One-eighth of the net proceeds from the sale thereof, after deducting cost of manufacturing and marketing same. If said gas is sold by the Lessee, the Lessor shall receive as royalty One-eighth of the net proceeds of the sale thereof.

4. This lease shall terminate as to all rights and obligations contained hereunder unless the Lessee shall on or before One year from date hereof commence operations for the drilling of a well for oil or gas on the above described land, and prosecute the drilling thereof with due diligence and dispatch until a depth of 5,000 feet has been reached, unless oil or gas is found in paying quantities at a lesser depth, or unless formations are encountered at a lesser depth which would indicate to the Lessee's geologist that further drilling would be unsuccessful, or unless mechanical difficulties are encountered in the prosecution of the drilling of said well; in the event such formations or mechanical difficulties are encountered, then the Lessee may abandon said well, but this lease shall continue in full force and effect provided a new well is commenced within ninety (90) days from the abandonment of the first well and thereafter drilled diligently as hereinabove provided. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, Lessee shall drill a dry hole on this land, to

Defendants' Exhibit No. 2—(Continued)

the depth specified above, this lease shall terminate unless operations for the drilling of a new well shall be commenced within 6 months from the date of the completion of said dry hole, and thereafter be drilled diligently by Lessee.

5. If operations for the drilling of a well for oil or gas be not commenced on said land on or before one year from this date, this lease shall terminate as to both parties, unless the Lessee shall, on or before one year from this date, pay or tender to the Lessor or for the Lessor's credit in the Bank at or its successors, which bank and its successors are the Lessor's agent, and shall continue as depository of any or all sums payable under this lease, regardless of changes of ownership in said land or in the oil or gas, or in the rentals to accrue thereunder, the sum of Eight and one-half cents per acre per month, which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of Six months. In like manner and upon like payments or tenders, the commencement of drilling operations may be further deferred for like periods successively during the term fixed in the preceding paragraph for the commencement of drilling operations. All payments or tenders may be made by check or draft of Lessee or any assignee thereof, mailed or delivered on or before the rental paying date. It is the intent hereof that rentals shall not be paid except for the

Defendants' Exhibit No. 2—(Continued)

purpose of deferring the commencement of drilling operations as herein provided.

6. After discovery of oil in paying quantities in any of the wells herein provided for on the above described premises, the Lessee agrees to commence operations for the drilling of another well within ninety (90) days thereafter, and thereafter continuously operate at least one (1) string of tools, allowing ninety (90) days between the completion of one well and the commencement of the next succeeding well until one well has been drilled to each 20 acres, said number to be an average regardless of where drilled. Nothing herein shall be considered to limit the number of wells which the Lessee may drill should it so elect in excess of the number hereinabove specified.

7. If, after the expiration of the twenty (20) year term of this lease, production on the leased premises shall cease from any cause, this lease shall not terminate provided Lessee resumes operations for the drilling of a well or the restoration of production within sixty (60) days from such cessation, and this lease shall remain in force during the prosecution of such operation, and, if production results therefrom, then as long as production continues.

8. In the event of discovery of oil in any well on adjacent properties within three hundred (300) feet of the boundary line of the above described premises, and the same produces oil in paying

Defendants' Exhibit No. 2—(Continued)

quantities for thirty (30) consecutive days, then in that event the next well to be drilled in accordance with Section 6 hereof shall be so placed as to offset said well on adjacent property, or if no well is being drilled by Lessee on demised premises, and the total well requirements as specified in Section 6 have not been fulfilled, then Lessee shall, within ninety (90) days thereafter commence operations for the drilling of a well to offset such producing well and drill the same diligently to the strata from which oil is being produced on the adjacent property.

9. There shall be no obligation upon the part of the Lessee to drill, pump or operate said premises, except offset wells, when wells offset are being operated, so long as the price of oil of the quality produced on said property shall be less than seventy-five cents per barrel at the well.

10. Notwithstanding anything in this lease contained to the contrary, it is expressly understood and agreed that the obligations imposed upon the Lessee may be suspended so long as Lessee's compliance is prevented by the elements, accidents, strikes, lockouts, riots, delays in transportation, inability to secure materials in the open market or interference by State or Federal action, or other causes beyond the reasonable control of the Lessee.

11. The Lessee shall carry on all operations in a careful, workmanlike manner and in accordance with the laws of the State of California. The

Defendants' Exhibit No. 2—(Continued)

Lessee shall keep full records of the operations and of the production and sales of products from said property, and such records and the operations on the property shall be at all reasonable times open to the inspection of the Lessor. Whenever requested by the Lessor, the Lessee shall furnish to the Lessor a copy of the logs of all wells drilled on said property.

12. The Lessor shall have the right to the use of the surface of said land for agricultural and grazing purposes to such an extent as will not interfere with the proper operation of the lease for oil or gas. The Lessee agrees to conduct its operations so as to interfere as little as is consistent with the economical operation of the property for oil or gas, with use of the land for agricultural or grazing purposes. Whenever required by Lessor in writing, the Lessee shall fence all sump holes or other openings to safeguard livestock on said land.

13. The Lessee shall pay the surface owner or surface tenant for all damages to livestock, crops, trees, fences, existing pipe lines, canals, buildings and other improvements caused by its operations under this lease. In event the parties hereto are unable to agree on the amount of such damage, then the same shall be left to arbitration.

14. The Lessee agrees that no well shall be drilled nearer than one hundred fifty (150) feet of any dwelling house, now on said premises, without the written consent of the Lessor, unless such drill-

Defendants' Exhibit No. 2—(Continued)

ing be necessary for the protection of the interests of either of the parties hereto. When requested by Lessor, the Lessee shall bury its pipe lines below plow depth.

15. The Lessee may at any time quitclaim this lease in its entirety or as to part of the acreage covered hereby and thereupon Lessee shall be released from all further obligations as to the part of the land so quitclaimed, and all rentals and drilling obligations shall be reduced pro rata according to the acreage quitclaimed. All lands quitclaimed shall remain subject to easements for rights-of-way necessary or convenient for Lessee's operations on land retained by it. Except as herein provided, full right to said land shall revest in Lessor, free and clear of all claims of Lessee, except that Lessor, his successors or assigns, shall not drill any well on the said land within three hundred (300) feet of any producing well retained by Lessee.

16. The Lessee shall pay all taxes on its improvements and all taxes on its oil stored on the leased premises on the first day of March in each year, and Seven-eighths of the increase of taxes on the demised premises, or on such part of the demised premises as may be retained by the Lessee, under this lease, caused by the discovery of oil, gas or other substances herein mentioned thereon, and whether assessed upon said land, or as mineral rights or otherwise; it being the intention of the parties hereto that any taxes levied or assessed due

Defendants' Exhibit No. 2—(Continued)

to the discovery and existence of any of said substances shall be borne by the parties hereto in the proportion of Seven-eighths by the Lessee and One-eighth by the Lessor.

17. On the expiration of this lease, or if sooner terminated, the Lessee shall quietly and peacefully surrender possession of the premises to the Lessor and deliver to him a good and sufficient quitclaim deed and shall, so far as practicable, cover all sump holes and excavations made by it. In case of abandonment of any well by Lessee, if the Lessor desires to retain the same, he may notify the Lessee to that effect and thereupon the Lessee shall leave such casings in the well as the Lessor may require, and the Lessor shall pay to the Lessee fifty per cent (50%) of the original cost of such casing on the ground.

18. Upon the violation of any of the terms or conditions of this lease by the Lessee and the failure to remedy the same within sixty days after written notice from the Lessor so to do, then, at the option of the Lessor, this lease shall forthwith cease and terminate, and all rights of the Lessee in and to said land be at an end, save and excepting as to any and all wells producing or being drilled and in respect to which Lessee shall not be in default, and saving and excepting rights-of-way necessary for Lessee's operations, provided, however, that the Lessee may at any time after such default, and upon payment of the sum of Ten Dollars (\$10.00)

Defendants' Exhibit No. 2—(Continued)

to the Lessor as and for fixed and liquidated damages quitclaim to the Lessor all of the right, title and interest of Lessee in and to the leased lands in respect to which it has made default, and thereupon all rights and obligations of the parties hereto one to the other shall thereupon cease and terminate as to the premises quitclaimed.

19. All work done on the land by the Lessee shall be at the Lessee's sole cost and expense, and the Lessee agrees to protect said land and the Lessor of claims of contractors, laborers, or material men, and the Lessor may post and keep posted on said lands such notices as he may desire in order to protect said lands against liens.

20. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that the Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied or assessed on or against the above described lands, and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or rentals accruing hereunder.

21. In case said Lessor owns a less interest in the above described lands than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid the said Lessor only in the proportion which his interest bears to the whole undivided fee.

Defendants' Exhibit No. 2—(Continued)

22. If the estate of either party hereto is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to their heirs, executors, administrators, successors and assigns, but no change of ownership in the land or in the rentals or royalties shall be binding on the Lessee until after Lessee has been furnished with written notice of such transfer or assignment, together with a certified copy of the instruments of transfer or assignment.

23. "Drilling Operations" as used in this lease is defined to mean placing of material upon premises for the construction of a Derrick and other necessary structures for the drilling of an oil or gas well followed diligently by the construction of such derrick and other structures and by the actual operation of drilling in the ground.

24. All payments which may fall due under this lease shall be made to Mrs. Antone Faria, one of the above named Lessors, in the manner herein stated.

25. This lease and all its terms, conditions and stipulations shall extend to and be binding on all the successors and assigns of said Lessor or Lessee.

Any provision or provisions in the Lease notwithstanding, it is agreed that this one of a series of Leases in a general district, said district including Sections 15, 16, 17, 21, 22, 23, 26, 20, 29, 27, 28 and 35 in Township 2 North, Range 1 East, Mount

Defendants' Exhibit No. 2 — (Continued)

Diablo Base and Meridian, there being Leases with numerous property owners within said district, and it is agreed that if the Lessee hereunder commences drilling operations within one year from this date on any of the land described in any of the Leases held by the Lessee, with the owners of the property within the district hereinabove described, that such drilling operations shall constitute a full compliance with Paragraphs 4 and 5 of this Lease and the drilling operations on the lands so held shall be and constitute drilling operations on the land herein described for all intents and purposes.

In Witness Whereof, the parties hereto have caused this lease to be executed the day and year first above written.

Witness:

Her
MARY X FARIA,
Mark
Lessor.

/s/ JOSEPH FARIA, Jr.,
/s/ BUD HILDEBRAND,
Lessee.

Mary Faria, being unable to write, made her mark and I, in her presence and at her request, wrote her name near it and signed my own name as a witness.

/s/ E. P. JACKSON.
/s/ F. L. BOLLA.

Defendants' Exhibit No. 2—(Continued)

State of California,

County of Contra Costa—ss.

On this 11th day of Aug., in the year nineteen hundred and forty-one, before me, E. P. Jackson, a Notary Public in and for the County of Contra Costa, State of California, residing therein, duly commission and sworn, personally appeared Mary Faria, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] E. P. JACKSON,

Notary Public in and for the County of Contra Costa, State of California.

State of California,

County of Contra Costa—ss.

On this 11th day of Aug., in the year nineteen hundred and forty-one, before me, E. P. Jackson, a Notary Public in and for the County of Contra Costa, State of California, residing therein, duly commissioner and sworn, personally appeared Bud Hildebrand and Joseph Faria, Jr., known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my

Defendants' Exhibit No. 2—(Continued)

hand and affixed my official seal the day and year first above written.

[Seal]

E. P. JACKSON,

Notary Public in and for the County of Contra
Costa, State of California.

Recorded at request of Joseph Faria, Jr., April
10, 1947, at 50 min. past 12 p.m. in Book 637 of
Official Records, Page 488, of the Records of Contra
Costa County.

/s/ RALPH CUNNINGHAM,

Recorder.

Fee, \$3.90; pd.

ASSIGNMENT OF OIL AND GAS LEASE

Whereas, on the 11th day of August, 1941, a cer-
tain Oil and Gas lease was made and entered into
by and between Mary Maria as Lessor and Joseph
Faria, Jr., married, and Bud Hildebrand, single,
as Lessee, covering certain lands in Contra Costa
County, California, more particularly described in
said lease which was recorded on the day
of, 19.., in the office of the County
Recorder in and for the County of Contra Costa,
State of California, in Liber..... at Page.....
(Purchaser is hereby referred to the full records
of Contra Costa County, California); and

Whereas, the aforesaid lease and all rights there-
under or incident thereto pertaining to the acreage

Defendants' Exhibit No. 2—(Continued)
hereinafter described have been duly assigned to
and are held and owned by the undersigned:

Now, Therefore, for and in consideration of One Dollar, and other goods and valuable considerations, the receipt of which is hereby acknowledged, the undersigned lessee or assignee of the said lease and all rights thereunder or incident thereto, pertaining to the acreage hereinafter described does hereby bargain, sell, transfer, assign and convey unto Joseph Faria, Jr., all of the right, title and interest of the original lessee and of the undersigned, in and to the said lease and rights thereunder in so far as it covers that certain 440.87 acres described in and embraced under said lease dated the 11th day of August, 1941, and located in Contra Costa County, California, more particularly described as follows:

Lot Two, Section 21, Township 2 North,
Range 1 West, containing 38.72 acres.

Portion Lot 1 and Southeast Quarter of
Northwest Quarter of Section 21, Township 2
North, Range 1 West, containing 76.64 acres.

South Half of Northeast Quarter of Section
21, Township 2 North, Range 1 West and West
12 acres of South Half of Northwest Quarter
of Section 22, Township 2 North, Range 1
West, containing 92 acres.

Lot Three and fractional Southeast Quarter
of Section 21, Township 2 North, Range 1
West, containing 155.51 acres. North $\frac{1}{2}$ of
NW $\frac{1}{4}$ of Section 21, T2N, R1W, contg. 80
acres.

Defendants' Exhibit No. 2—(Continued)

The undersigned assignor, for the same consideration, for himself and his beneficiaries, heirs, successors and assigns, does hereby covenant with said assignee herein named, his heirs, successors and assigns that he, the undersigned, is the lawful lessee or assignee of the said lease and of all the rights and interests thereunder pertaining to the lease acreage hereby assigned; that the undersigned has good right and authority to sell and assign said lease; that the said lease date August 11, 1941, is in full force and effect, subject to the records of Contra Costa County, California, and that all rentals and royalties due and payable upon said acreage hereby assigned have been paid; and

The assignment, being a part of the original lease as described in paragraph No. 1 of this assignment, is made by the undersigned and is accepted by said assignee herein named subject to all the terms, covenants and conditions of said lease, according to record.

In Witness Whereof, the undersigned has signed and sealed this instrument this twenty-first day of February, 1942.

Executed and Dated at Antioch, Contra Costa County, California.

/s/ BUD HILDEBRAND,
Unmarried.

/s/ JOSEPH FARIA, Jr.,
ESTHER L. FARIA,
His Wife.

Defendants' Exhibit No. 2—(Continued)

State of California,

County of Contra Costa—ss.

On this 10th day of April in the year one thousand nine hundred and forty-two, before me, Chas. A. French, a Notary Public in and for the County of Contra Costa, State of California, residing therein, duly commissioned and sworn, personally appeared Joseph Faria, Jr., and Esther L. Faria, his wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof I have hereunto set my hand and affix my official seal in the County of Contra Costa the day and year in this certificate first above written.

[Seal] /s/ CHAS. A. FRENCH,

Notary Public in and for the County of Contra
Costa, State of California.

My commission expires April 26, 1942.

Recorded at request of Joseph Faria, Jr., April 10, 1942, at 50 min. past 12 o'clock p.m., in Liber 655 of, page 23, Official Records of Contra Costa County.

RALPH CUNNINGHAM,

Recorder.

.....

Deputy

Fee, \$1.40; pd.

Defendants' Exhibit No. 2—(Continued)

State of California,

County of Stanislaus—ss.

On this 21st day of February, A.D. 1942, before me, Helen Fetterman, Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appear Bud Hildebrand, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] /s/ HELEN FETTERMAN,

Notary Public in and for said
County and State.

ASSIGNMENT OF OIL AND GAS LEASE

No. 22309. Assignment of Oil and Gas Lease. From Joseph Faria, Jr., and Esther L. Faria to Cal-Bay Corporation.

Whereas, On the 11th day of August, 1941, a certain oil and gas lease was made and entered into by and between Mary Maria, Lessor, and Joseph Faria, Jr., and Bud Hildebrand, Lessee, covering the following described land in the County of Contra Costa and the State of California to wit:

Lot 2 Sec. 21 T2N R1W 38.72 Ac.

Por Lot 1 & SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 21 T2N R1W

Defendants' Exhibit No. 2—(Continued)

76.64 Ac. S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec 21 T2N R1W & W
12 Ac of S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec 22 T2N R1W 92 Ac.

Lot 3 & Fract'l SE $\frac{1}{4}$ of Sec 21 T2N R1W 155.51
Ac. N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec 21 T2N R1W 80 Ac and
containing 440.87 acres more or less.

Except that part of the S $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec 21
which is a part of Lot 3, and amounting to 73.51
acres,

Said lease being recorded in the office of the
County Recorder of the County of Contra Costa in
books 637, page 488, and

Whereas, The said lease and all rights thereunder
or incident thereto are now owned by Joseph Faria,
Jr.

Now, Therefore, For and in consideration of One
Dollar (\$1.00) and other considerations, the re-
ceipt of which is hereby acknowledged, the under-
signed, present owners of the said lease and all
rights thereunder or incident thereto, do hereby
bargain, sell, transfer, assign and convey unto
Cal-Bay Corporation, a California corporation, all
the right, title and interest of the original lessee
and present owner in and to the said lease and
rights thereunder and unto its successors and as-
signs

And for the same consideration, the undersigned
for themselves and their heirs, successors and rep-
resentatives, do covenant with the said assignee, its
successors or assigns that they are the lawful own-

Defendants' Exhibit No. 2—(Continued)

ers of the said lease and all rights and interests thereunder; that the undersigned have good right and authority to sell and convey the same, and that said rights, interests and property, heretofore acquired by assignors under lease or lease assignment to them are clear and free from all liens and incumbrances (but assignors do not covenant, represent or warrant that the title to said land itself or any part thereof is free of incumbrances), and that all rentals and royalties due and payable thereunder have been duly paid.

In Witness Whereof, The undersigned owners and assignors have signed this instrument this 28th day of April, A. D. 1942.

/s/ JOSEPH FARIA, JR.,

/s/ ESTHER L. FARIA.

Recorded at request of Webster and Webster, Aug. 7, 1947, 9 a.m., in Vol. 672, Page 473, Official Records of Contra Costa County.

Fee \$1.20 paid.

/s/ RALPH CUNNINGHAM,

County Recorder.

State of California,
County of Contra Costa—ss.

On This 28th day of April, A. D. 1942, before me, Chas. A. French, a Notary Public in and for said County and State, personally appeared Joseph Faria, Jr., and Esther L. Faria, his wife, known to me (or proved to me on the oath of), to be

Defendants' Exhibit No. 2—(Continued)

the persons whose names are subscribed to the within Instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

/s/ CHAS. A. FRENCH,

Notary Public in and for said County and State.

My commission expires April 26th, 1946.

WAIVER OF CONDITIONS OF LEASE

I, Mary Faria, being the Lessor named in that certain lease entered into on the 11th day of August, 1941, with Bud Hildebrand and Joseph Faria, Jr., do hereby agree with the Lessee named in said lease, his assigns or successors in interest, that should compliance by Lessee with the requirements of paragraph 6 of page 2 of said lease be prevented by any ruling of the United States Petroleum Coordinator, or by any other governmental regulations, then and in such event, I do hereby expressly waive compliance with the provisions of said paragraph by the said Lessee, his assigns or successors in interest.

Dated: May 26th, 1942.

/s/ MARY FARIA,

Lessor.

her X mark

Witness:

/s/ MAE E. ROCHE.

[Endorsed]: Filed Jan. 23, 1947.

DEPARTMENT OF THE INTERIOR

(Endorsed): Filed Jan. 23, 1947.



DEFENDANT'S EXHIBIT No. 14

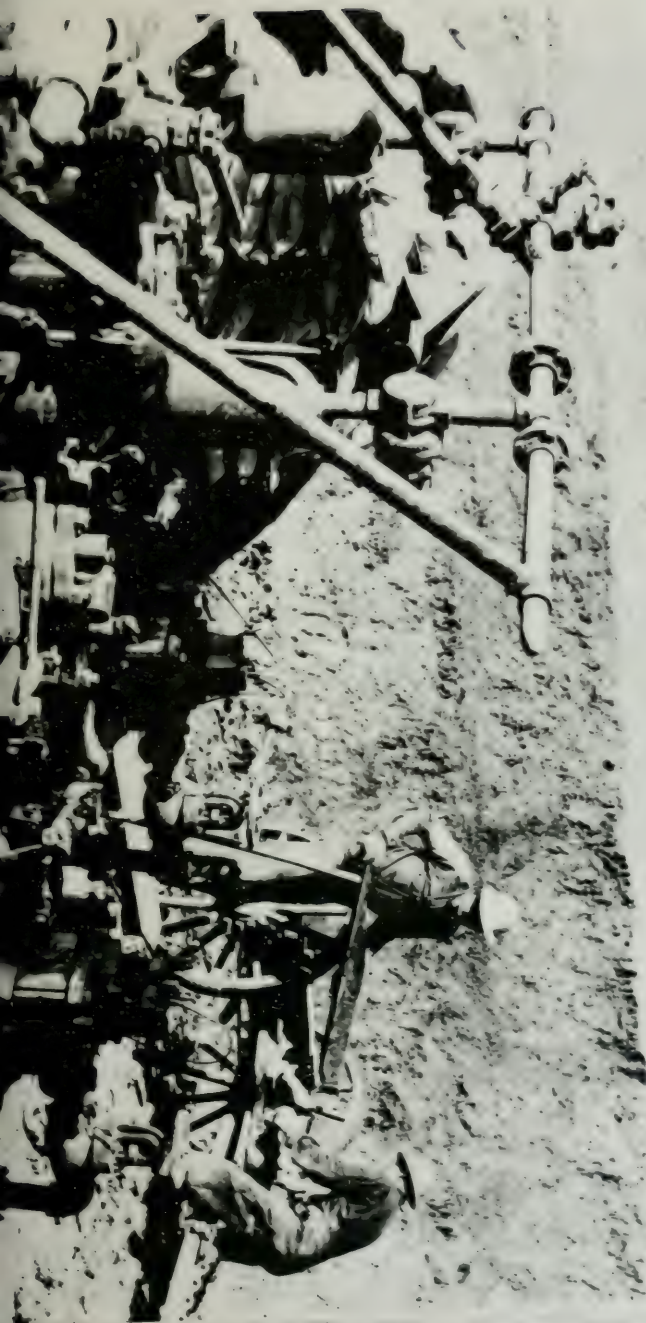
(Endorsed): Filed Jan. 23, 1947.



1240



DEFENDANTS' EXHIBIT No. 16
(Endorsed): Filed Jan. 23, 1947.





СОВЕТСКОЕ КОРАБЛЮВАНЕ
(Торговля) 1940-1941 г.г.

DEFENDANTS' EXHIBIT No. 19

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 ACRES OF LAND, more or less, situate in
the County of Contra Costa, State of Califor-
nia, W. J. VON HECKEREN, et al.,
Defendants.

Notice of Termination of Right to Possession of
Parcels 58 and 59 in This Action

To defendant Cal-Bay Corporation, a corporation,
and to Messrs. Fitzgerald, Abbott & Beardsley,
its Attorneys:

You and Each of You will please take notice as follows: That pursuant to the Order of Court modifying Order for Immediate Possession as to Parcels 58 and 59 in this action, dated September 28, 1944, your right to possession of Parcels 58 and 59, as the same are designated in the Complaint and Order for Immediate Possession on file herein, is hereby terminated; that defendant Cal-Bay Corporation may continue in possession and may continue its operations on said Parcels 58 and 59 until thirty (30) days after service of this Notice as provided in said Order of Court; and that there-

upon defendant Cal-Bay Corporation shall forthwith vacate said Parcels 58 and 59 and shall surrender the same to plaintiff.

Reference is made to the said Order of Court dated September 28, 1944, which is incorporated in this Notice by reference.

Dated, December 15, 1944.

/s/ M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General,
Attorney for Plaintiff.

Receipt of a copy of the foregoing Notice of Termination of Right to Possession of Parcels 58 and 59 in this Action is hereby acknowledged, this 15th day of December, 1944.

FITZGERALD, ABBOTT &
BEARDSLEY,
Attorneys for defendant
Cal-Bay Corporation.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

C. W. CALBREATH,
Clerk, District Court of the U. S., Northern District
of California.

By /s/ L. C. JACOBSEN,
Deputy Clerk.

[Endorsed]: Filed Jan. 23, 1947.

DEFENDANTS' EXHIBIT No. 20

R. P. Obrecht
220 Fourth St.
Antioch, Calif.

November 4, 1943

Mr. Joe Faria
c/o E. M. Woodman
Antioch, Calif.

Dear Mr. Faria:

An Orsat analysis of a sample of gas taken from your well on October 27, 1943, was found to be:

| | |
|---|------|
| CH ₄ | 94.5 |
| C ₂ H ₆ | 0.5 |
| N ₂ | 5.0 |
| O ₂ , CO ₂ , & CO | Nil |

I am enclosing an extra copy which you may forward to Mr. Byron Norris.

Yours very truly,

/s/ R. P. OBRECHT.

[Endorsed]: Filed Jan. 24, 1947.

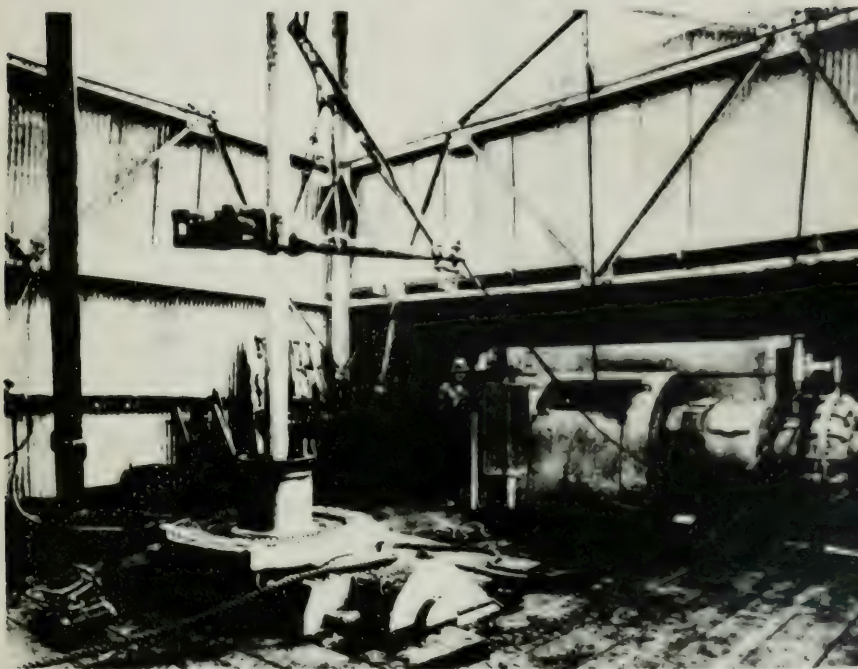


FIG. 19. Interior view of rig. Modern draw-works and rotary table equipped with under-floor drive. (Courtesy of National Supply Co.)

jected in service. The material is more uniform and dependable in its properties than timber. They are lighter and present less surface to the wind. They are not so easily distorted under stress. Steel derricks have a longer life than timber derricks and present less fire hazard. They have a greater salvage value and are readily disassembled and erected at a new location. Steel foundation members are more rigid than timber foundations. Steel rig wheels maintain their original form better than wooden wheels and are mechanically more efficient. Concrete foundation piers, generally used in supporting steel structures, provide a firmer support for the derrick and drilling equipment than timber (Uren, L. C. 34, pp. 126-142).

Steel derricks may be constructed either of structural steel forms or of tubular forms, but in the California fields, the structural steel type has been most used. They have been rigidly standardized as to dimensions and essential features by the American Petroleum Institute and are available from California and eastern manufacturers in size up to 175 ft. in height and 32 ft. square at the base. Constructed of steel of high-tensile strength and suitably reinforced, they are designed for safe working loads as great as 500 tons with a safety factor of two.

ROTARY CORING EQUIPMENT

As previously explained, one of the principal criticisms of the early rotary drilling equipment was that the finely pulverized drill cuttings brought to the surface by the circulating fluid did not afford a satisfactory basis for determining the character of the formation in which the drill was working. Seeking to overcome this difficulty, rotary core barrels were devised to secure undisturbed samples from the formation in the bottom of the well. Early core barrels were of primitive construction designed merely to punch out a short section of the formation, usually but a few inches long. Such samples were often badly "burned" and distorted. Eventually the double-tube core barrel was developed and perfected. Equipped with a suitable cutting head attached to the lower end of the drill pipe in place of the usual drill bit, these improved core barrels are capable of securing cores of the formation penetrated by the well that are often as much as ten feet long and but little distorted. They afford very satisfactory samples for all purposes, though in unconsolidated and some cemented formations, they seldom secure more than 50% of interval cored. The remainder, usually the surface material, is disintegrated by operation of the cutting head. The cuttings, ranging from 2 to 5 inches in diameter are removed

Application of early patterns of core barrels required reaming of the well to enlarge the cased interval to full gauge, but more recent types maintain the full gauge of the hole as the core is cut (Uren, I. C. 44, pp. 262-264).

One reason why core barrels are not more generously used is the interruption in drilling progress and consequent lost time and expense in making two round-trips in and out of the well with the drill pipe to substitute the coring tool for the ordinary drilling bit, to cut the core and bring it to the surface. This may be avoided by use of a retractable core barrel that can be run to bottom on a wire line through the drill pipe. A special type drill is used with the central portion cut away and equipped with a locking device for engaging the core barrel while the core is being cut. The core barrel and core may then be retrieved and removed on a wire line through the drill pipe; or the drill pipe may be removed, bringing the core barrel and core to the surface. In this case, a core may be cut just before it is planned to remove the drill pipe to replace the drilling bit. Though somewhat smaller than cores cut by ordinary core barrels, they are satisfactory for most purposes.

Most operators now use mechanical coring but sparingly, particularly in testing formations for landing casing and in securing occasional samples of reservoir rocks. On the other hand, there are many instances where an accurate log is desired—as in the drilling of wildcat wells—in which hundreds of feet of formation have been continuously cored. A core is often taken to determine whether a prospective oil-producing sand is oil-saturated or "wet." The presence of oil in a core is often clearly apparent, but if there is little oil, a chloroform, ether, or acetone test may be necessary to determine whether or not oil is present. Presence of gas in a core is usually made apparent by "bleeding" or by frothing and expulsion of fluids from the pore spaces of the core as it is removed from the core barrel.

IMPROVEMENTS IN ROTARY DRILLING BITS

Early drilling with the rotary equipment was accomplished almost entirely with the fish-tail type of bit. This bit served satisfactorily in drilling shallow wells in soft formations, but as deeper drilling became necessary and harder formations were encountered, it became increasingly necessary to develop bits that were capable of drilling harder rocks and of achieving greater footages, requiring less frequent withdrawal of the drill pipe from the wells to change bits. For attaining greater footages in soft and moderately hard formations, disc bits were found useful, first in two-disc patterns, later styles being equipped with four discs and side reamers, in some cases with the edges of the bits "marcelled." For drilling in hard rock formations, fish-tail and disc bits are dulled rapidly and "rock bits" equipped with toothed cones or rollers are much more effective. Roller core bits are available for hard-rock coring. Special types of demountable bits are also effective in moderately hard formations. The Zublin bit, affording an unusual eccentric motion, has been popular in some California fields. Collapsible bits, permitting replacement of the cutting elements without withdrawing the drill pipe have found but limited use as yet.

Early bits were made of tool steel; later, special alloy steels were used, particularly chrome steel. Studies of

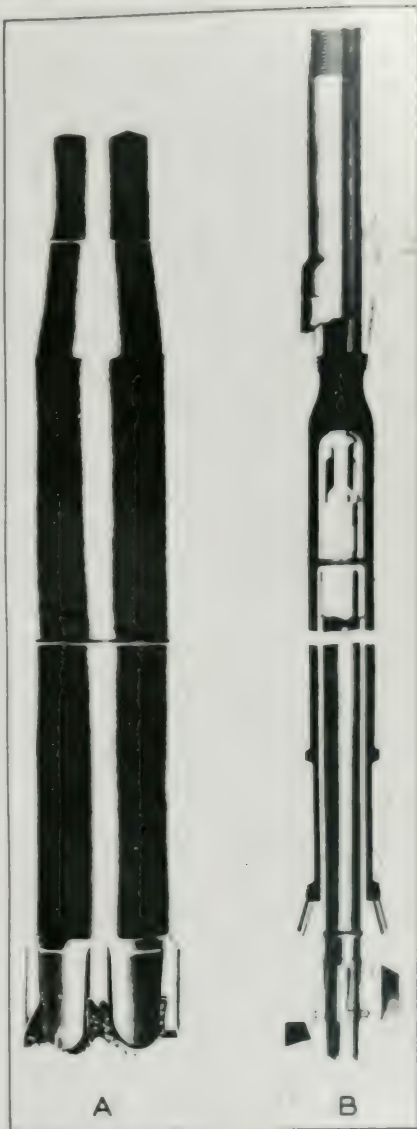


FIG. 20. Examples of modern rotary core barrels.
A. Hughes core bit equipped with hard cutting element.
B. Elliott rotary core drill. (Illustrations by permission of Hughes Tool Co.)

No. 23529-6
Deft Filed Feb. 21, 1947
 Filed JAN 28 1947

C. V.

By L. R. Blount
 Deputy Clerk

DEFENDANT'S EXHIBIT No. 22
(Endorsed): Filed Jan. 26, 1947.



DEFENDANTS' EXHIBIT NO. 23

(Endorsed):

Filed 1/28/47.

SOLD TO

Cal. Bay Corporation
P.O. Box 605
Brentwood, Calif.
None

MEMORANDUM OF SALE

B 7401

177 1944

CUSTOMER'S ORDER NO.

QUANTITY

ARTICLE

178 Septe 2923' 4 3/4" O.D. 16 #
Weight 10 x 10 x 10 1/4 Make
Identification - 2923-501
@ 70¢ per foot 2923-501
4 3/4" O.D. 16 # 2923-501
These all at 35¢

DELIVERY TO BE TAKEN ON OR BEFORE

MATERIAL PURCHASED BY

BUYER Cal Bay Corporation

THE UNDERSIGNED HEREBY CERTIFIES THAT THE GOODS LISTED HEREON ARE PURCHASED FOR RESALE IN THE FORM OF REFINABLE PERSONAL PROPERTY.

BUYER

PERMIT NO.

STANDARD OIL COMPANY OF CALIFORNIA.

BY

CHECK NO.

PAYMENT

APPROVAL

STOREKEEPER

DEPT. RELEASE

NOTICE

THIS MATERIAL AND/OR EQUIPMENT IS SOLD BY THE SELLER AND ACCEPTED BY THE BUYER IN ITS PRESENT CONDITION AND AT ITS PRESENT LOCATION. THE BUYER ASSURES ALL RISK OF INJURY TO PERSONS OR PROPERTY ARISING THROUGH ITS USE OR EXISTENCE. THE SELLER HAS EXTREME CAUTION IN HANDLING EMPTY CONTAINERS AS THEY MAY HAVE BEEN USED FOR INFLAMMABLE AND A FINE OR EXPLOSIVE HAZARD MAY BE INVOLVED.

IDENTIFICATION NO.

AMOUNT

PRICE

70¢ 2923 10

35¢ 35 00

AMOUNT FOR MATERIAL

SALES TAX

TOTAL

292 10

64 53

2985 63

1/4

1/4

1/4

№ 6015

Customer's Order No. 19

Doc 9-5-43

Well No. 1

District Attorney

County Clerk

SHOE TEST No.

Size Coding

Rubber—Turned to 85° 1" Size Band 1/2

Drill Pipe: Run Dry _____ with Fluid None

RESULTS

Set Packer _____ M. Open Trip Value 1105 P. M. Let Packer Set 1 P. M.

Shot In Pressure Time..... Did Shoulder Hold? Yes

Blow? Light Steady for Duration of Test

Jayed 10 min getting Pocket loose

Field Rings

2 Days Service Man Expenses 12.50

May-4's Rumble 3 H. 1st

Now Chargeable to Test

Was Anchor Phased?

Was Tool Plugged?

WAS RUBBER DAMAGED? Yes

60 Dodge T-80

~~Spectrometer End of Trip~~

~~Secretary of State of Idaho~~

TOTAL INFLUENCE

M. G. Johnston Oilfield Service Corporation shall not be liable for damage of any kind to the property or personnel of the one for whom a test is made or for any loss suffered or sustained, directly or indirectly, through the use of the equipment or the statement or opinion concerning the result of any test.

Approved _____

019 1891 5211

A bid must be made with **QUICK MILLION HOURS**, whether successful or not.

No. 23529-B

Delt Exhibit No. 24

Filed JAN 28 1947

C. W. Connerly, Clerk

By L. R. E. Houghton

M O JOHNSTON
OIL FIELD SERVICE CORPORATION.

DEFENDANTS' EXHIBIT No. 24
(Endorsed): Filed Jan. 28, 1947.

LBS.
PER
SQ. IN. 3750
3500
3250
3000
2750
2500
2250
2000
1750
1500
1250
1000
750
500
250
0

DATE 10-5-43

COMPANY Cal Day

WELL Fairview

LOCATION Pittsburg

PACKER SET AT 4287

HOLE OPEN TO 4318

RECORDER NO. F-130

CAPACITY 3750#

RECORDER DEPTH 4311

CALIBRATED. September 24, 1943

TEMPERATURE.

FLUID RISE.

FLOW PERIOD 18 MIN

SHUT IN PERIOD.

TICKET NO. 6015

PRESSURE.

Form 3

DEFENDANTS' EXHIBIT No. 27

M. O. JOHNSTON OIL FIELD SERVICE CORPORATION

3117 San Fernando Road

Los Angeles, California

—Phones

TEST TICKET

No. 6757

Los Angeles . . . Albany 0186

Bakersfield . . . Phone 2794

Venture . . . Phone 5621

Stockton . . . Phone 1636

Customer's Order No. _____

Date 10-20-73

Name Cat-Roy Co.

Well No. 1

Address to Mail Invoice _____

Lease F-210

District 40000 County 13

FORMATION TEST No. _____

SHOE TEST No. 1

Successful No. _____

Mis-run No. _____

Successful No. _____

Mis-run No. _____

Size Hole _____

Depth Well 1250'

Size Casing 7" x 2 1/2"

Ret Hole Size _____

Depth _____

Tool Jt. 3 1/2"

Depth of Shoe 3 1/2"

Formation Shoulder _____

Test Tool Size 3 1/2"

Open Below Shoe 12 1/2"

Depth to Shoulder _____

Sub Size 3 1/2"

Packer Set At 12 1/2"

Packer Set At _____

Sub Rented from _____

Type Packer Used 1 1/2"

Jar Used (Size) _____

(Make) _____

Type Packer Used _____

Anchor Size 3"

Length 1'

Bottom of Perforation at 12 1/2"

Taper Turned to _____

Pressure Recorder Make _____

Cap 1 1/2" No. 1

Rubber Turned to _____

Size Bean _____

Drill Pipe: Run Dry _____

with Fluid _____

RESULTS

Set Packer _____

M. Open Trip Valve 3 1/2"

M. Let Packer Set 12 1/2"

Shut In Pressure Time _____

Did Shoulder Hold? _____

Blow? _____

Fluid Rise _____

Was Anchor Plugged? NO

Was Tool Plugged? NO

WAS RUBBER DAMAGED? NO

Time Chargeable to Test _____

Car No. _____

Speedometer End of Trip _____

Speedometer Start of Trip _____

TOTAL MILES _____

M. O. Johnston Oil Field Service Corporation shall not be liable for damage of any kind to the person or personnel of the one for whom a test is made or for any loss suffered or sustained, or for any damage to the equipment or its statement or opinion concerning the result of any test.

Approved _____

Dis Representative _____

A ticket must be made with complete information for each run, whether successful or not.

Form 3

M. O. JOHNSTON OIL FIELD SERVICE CORPORATION

3117 San Fernando Road

Los Angeles, California

—Phones

TEST TICKET

No. 6758

Los Angeles ... Albany 0186
 Bakersfield ... Phone 2754
 Ventura ... Phone 5621
 Stockton ... Phone 1636

Customer's Order No. _____

Date 10-21-43

Name _____ Well No. _____

Address to Mail Invoice _____ Lease _____

District _____ County _____

FORMATION TEST No. _____

SHOE TEST No. _____

Successful No. _____ Mis-run No. _____ Successful No. _____ Mis-run No. _____

Size Hole _____ Depth Well 4231' _____ Size Casing _____

Ret Hole Size _____ Depth Tool Jt. 21' _____ Depth of Shoe _____

Formation Shoulder _____ Test Tool Size 3' _____ Open Below Shoe _____

Depth to Shoulder _____ Sub Size _____ Packer Set At 12' _____

Packer Set At _____ Sub Rented from _____ Type Packer Used _____

Jar Used (Size) _____ (Make) _____

Type Packer Used _____ Anchor: Size 2' Length _____ Bottom of Perforation at _____

Taper - Turned to _____ Pressure Recorder: Make _____ Cap _____ No _____

Rubber Turned to _____ Size Bean _____

Drill Pipe: Run Dry _____ with Fluid _____

RESULTS

Set Packer _____ M. Open Trip Valve _____ M. Let Packer Set _____

Shut In Pressure Time _____ Did Shoulder Hold? _____

Blow? _____

Fluid Rise _____

Was Anchor Plugged? _____

Was Tool Plugged? _____

WAS RUBBER DAMAGED? _____

Time Chargeable to Test _____

Car No. _____

Speedometer End of Trip _____

Speedometer Start of Trip _____

TOTAL MILES _____

M. O. Johnston Oil Field Service Corporation shall not be liable for damage of any kind to the property or personnel of the one for whom a test is made or for any loss suffered or sustained, directly or indirectly, by the use of the equipment, or the statement or opinion concerning the result of any test.

Approved _____

Oil Representative _____

A ticket must be made with OFFICE IN CHARGE, whether successful or not.

[Endorsed]; Filed Jan. 29, 1947.

No 23529-9

Depts. Exhibit No. 27

Filed JAN 29 1947

C. W. _____

By L. R. Ellington

Deputy Clerk

DEFENDANTS' EXHIBIT No. 30

[Letterhead Byron B. Norris]

November 1, 1943.

Supplemental Report on the Cal-Bay Corporation,
Well No. "Faria" 1, Pittsburg-Concord Area,
Contra Costa County, California.

Pursuant to your request I will outline the development operations at this well to date and state what, in my opinion should be done with respect to future operations.

The well has to date been drilled to a total depth of 4398 feet. During the drilling of this well, ditch samples and cores were gathered and examined by a competent micropaleontologist in order to determine, by means of fossil evidence, what the various formations were and where they should be placed in the geologic column. There were times when there were not sufficient fossils in the samples to definitely identify them. In general the formations encountered show a normal geological column. The result of this work shows the top of the Nortonville Shale at 3500 feet, the top of the Domengine formation at 3820 feet and the top of the Martinez formation at about 4334 feet.

During this drilling operation gas shows were in evidence at many places. While drilling in a hard shale at about 4268 a high pressure gas sand was encountered which showed up on the ditch shortly and for some time threatened to blow the

mud from the hole. Special treatment was given the mud and it was weighted with Baroid until it weighed 96 pounds per cubic foot. This stopped the surging action but gas still broke thru the mud.

This gas sand was encountered while drilling so there was no shoulder available on which to set a cone packer. However, two attempts were made to get a formation test by use of a sidewall packer but were not successful because the packer did not hold.

The hole was cored ahead to a depth of 4398 feet. A Schlumberger survey was made to a depth of 4373 feet and indicated that the zone from which the gas was coming was between depth of 4268 and 4300 feet. Also, a temperature survey was run from depths of 3000 to 4373 feet and indicated gas entering the hole above 4315 with the bulk of it from 4265 to 4300 feet. This temperature survey is based on the theory that gas and oil entering a hole tend to cool it. Of course, it was known that gas was entering this hole because it was breaking thru at the surface. Then 7" O.D., 23 pound casing was cemented at 4343 feet with 150 sacks of cement. To give a shut-off test for the State Division of Oil and Gas, 4 3/9" holes were shot at 4250 to 4251 feet. This test demonstrated a water shut-off. Then the casing was perforated 4269 to 4276 with 22 3/8" holes. This test was made with a Johnston Formation Tester on 3" drill pipe. The test showed an estimated 100,000 cubic feet of gas. There was no water with the gas. Later the casing was per-

forated 4281 to 4289 with 9 ½" holes. A formation test of all perforations from 4269 to 4289 showed an estimated blow of 125,000 cubic feet of gas. This test indicated that the zone was high pressure gas but the volume was not large due probably to the low permeability of the sand. The Schlumberger survey also indicated the possibility of a low permeability sand. There was no water with the gas.

The bottom hole pressure bomb from the Johnston formation tester showed bottom hole pressures from 200 to 2125 pounds on this zone over a period of one hour.

A sample of this gas was taken by Mr. R. P. Obrecht, chemist for the Dow Chemical Company who reports as follows:

An Orsat analysis of a sample of gas taken from your well on October 27, 1943, was found to be:

| | |
|---|------|
| CH ₄ | 94.5 |
| C ₂ H ₆ | 0.5 |
| N ₂ | 5.0 |
| O ₂ , CO ₂ , & CO | Nil |

The above indicates that the gas obtained is a good commercial grade of gas.

Later the hole was perforated with 4 ½" holes between depths of 3768 and 3769 feet. On test this zone showed salt water. It will be necessary to cement off these perforations with a squeeze job at a later date.

With respect to future operations, after exam-

ining all the facts we have before us, it is my opinion that this hole should be deepened in the hope that sand formations will be encountered which will contain gas in large volume. The drilling and testing so far has demonstrated that at this location there is a structure capable of holding high pressure gas of good quality.

From the standpoint of formations to be encountered and correlating with the producing zones in neighborhood gas fields, I find that there are two known possibilities. The first is the sand below the Martinez shale. This is the producing sand in the McDonald Island Gas Field which is one of the nearest producing gas fields to this location. At the present time, based on the analysis of the micro-paleontologist, the well is now drilling in Martinez shale. Below this, formations of Cretaceous Age will be encountered. There may be production from any sand formation encountered. However, with the neighboring Tracy Gas Field producing from formations of Cretaceous Age, it seems that it is quite likely that given the structural conditions known to exist that gas can be produced from that formation.

There is 6000 feet of 3" drill pipe at the rig now. In the writers' opinion it would be well to prepare to drill another 2000 feet if necessary in order to test any possible producing formations that may be encountered in the balance of the Eocene formations and in the top of the Cretaceous formations. It is possible that a commercial gas sand may be

encountered at any future depth. There is not sufficient data available to definitely tie down the thickness of the various formations to be encountered, so the writer recommends a test of all likely formations encountered in the next 2000 feet of this hole.

Respectfully yours,

/s/ BYRON B. NORRIS,

Petroleum Engineer.

BBN/m

[Endorsed]: Filed Jan. 30, 1947.

DEFENDANTS' EXHIBIT No. 31

[Letterhead Paul P. Goudkoff]

November 10, 1944

Mr. Byron B. Norris,
1009 Subway Terminal Building,
Los Angeles, California.

California Bay Corp. Faria #1 Well

Report on examination of 2 core samples from
4823'-4843' interval.

Formation:

4823'-4843'—Dark gray, impure sand grading into
massive sandy shale. Contains no
organic remains except scattered car-
bonaceous particles.

Remark:

Because of the lack of diagnostic organic re-
mains, the age of the formation represented by
samples cannot be determined. Lithologically the
samples resemble some of those obtained from the
Cerros member (Meganos stage of Clark and
Vokes) cored by the Standard Oil Community
Suisun well #1.

Respectfully submitted

/s/ PAUL P. GOUDKOFF.

[Endorsed]: Filed Jan. 30, 1947.

DEFENDANTS' EXHIBIT No. 34

Commandant's Office

Navy Yard, Mare Island, California

Address Reply to the Commandant, and Refer to
No. NT1-62 (502-676790)

20 May 1944

Mae E. Roche
Concord, California

Dear Madam:

The Government wishes to obtain certain information which will be facilitated by having a surveying party enter upon your property in the Clayton Valley east of Concord, Calif.

It is requested that you give your permission for this party to make the desired survey by signing in the place indicated and returning the attached copy of this letter in the envelope furnished.

Your prompt cooperation in granting this permission will be of material assistance in forwarding an important war project.

By direction of the Commandant.

Very truly yours,

/s/ F. C. BEDELL,

Captain (CEC), U.S.N.,
Public Works Officer

Permission granted:

May 1944.

date

Signature

Certified to be a true copy.

/s/ J. R. DAVIS,

Comdr. (CEC) U.S.N.

[Letters addressed to Mary Faria, Route 2, Box 120, Concord, California, and Edward Faria, Clayton Road, Concord, California, which are part of this exhibit, are identical with the letter above set out in full and addressed to Mae E. Roche, Concord, California, except as to names and addresses.]

[Endorsed]: Filed Feb. 4, 1947.

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS
WELL SUMMARY REPORT

FILL THIS BLANK IN WITH TYPEWRITER. WRITE ON ONE SIDE OF PAPER ONLY

Quintuplicate
File

Operator Calestey Corporation Field Calleguas

Well No. 1012 Sec. 21 T. 2 N. R. 1 E. S. 1 E.

Location 2145 feet south and 1465 ft. from Elevation of derrick floor above sea level 411 (ground) feet.

In compliance with the provisions of Chapter 93, Statutes of 1939, the information given herewith is a complete and correct record of the present condition of the well and all work done thereon, so far as can be determined from all available records.

Date January 13, 1943 Signed Joseph H. Smith
By H. W. Wents Jr. & J. P. del'Kav Title Pres. Cal. Oil Corp.
(Engineer or Geologist) (Superintendent) (President, Secretary, Agent)

Commenced drilling July 14, 1943 Completed drilling Dec. 1944 Drilling tools 5000

Total depth 4975 Plugged depth 5447 GEOLOGICAL MARKERS DEPTH

Run 3" drill collar & bit stuck at shoe of casing at 4545 ft. 3" drill pipe, drill collar & 6-5/8" bit in re-drilled hole 4735-4945 ft. casing drilled through and sidetracked below 4150 ft.
Top Bartonville shale ± 3500 ft ±
Top Domingue formation ± 3820 " ±
Top Martins formation ± 4334 " ±

Commenced producing _____ Flowing/gas lift/pumping (from out customary words)

Initial production _____
Production after 30 days _____

| Clean Oil bbl. per day | Gravity Clean Oil | Per Cent Water including emulsion | Gas Mcf. per day | Tubing Pressure | Casing Pressure |
|------------------------|-------------------|-----------------------------------|------------------|-----------------|-----------------|
| 0-0-0 | | | | | |

See footnote page 9
CASING RECORD (Present Hole)

| Casing (F. I.) | Depth of Shoe | Top of Casing | Weight of Casing | New or Second Hand | Seamless or Layered | Grade of Casing | Size of Hole Casing landed in | Number of Sacks of Cement | Depth of Cementing of through perforations |
|----------------|---------------|---------------|------------------|--------------------|---------------------|-----------------|-------------------------------|---------------------------|--|
| 4-1/2" | 615 | surface | 45 | New | Seamless | - | 1-1/2" | 440 | - |
| | 1345 | surface | 25 | New | Seamless | J-55 | 9-5/8" | 150 | - |

PERFORATIONS

| Casing | From | To | Size of Perforations | Number of Rows | Distance Between Rows | Method of Perforations |
|--------|----------|----------|----------------------|----------------|-----------------------|------------------------|
| | 1520 ft. | 1521 ft. | 1/2" | | | Spot - 4 holes |
| | 1565 ft. | 1567 ft. | 1/2" | | | " - 4 " |
| | 1624 ft. | 1626 ft. | 3/8" | | | " - 4 " |
| | 1670 ft. | 1680 ft. | 1/2" | | | " - 4 " |
| | 1681 ft. | 1689 ft. | 1/2" | | | " - 4 " |

Electrical Log Depths 615 to 1375 feet

STATE OF CALIFORNIA
 DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

LOG AND CORE RECORD OF OIL OR GAS WELL

Operator Cal-Bay Corporation Field - - -

Well No. Faria # 1 Sec. 21 , T. 2 N , R. 1 W , M.D. - & M. -

FORMATIONS PENETRATED BY WELL

| DEPTH TO | | Thickness | Drilled or Cored | Recovery | DESCRIPTION |
|------------------|---------------------|-----------|------------------|----------|---|
| Top of Formation | Bottom of Formation | | | | |
| Surface | 84 | 84 | Drilled | | Gravel with streaks of shale |
| 84 | 150 | 66 | " | | Hard sand and gravel |
| 150 | 212 | 62 | " | | Hard sand and streaks of clay |
| 212 | 267 | 55 | " | | Shale and boulders |
| 267 | 363 | 96 | " | | Hard sand and shale |
| 363 | 416 | 53 | " | | Hard sandy shale |
| 416 | 457 | 41 | " | | Hard sand and streaks of shale |
| 457 | 526 | 69 | " | | Hard sandy shale. |
| 526 | 590 | 64 | " | | Hard sand and shale |
| 590 | 633 | 43 | " | | Shale |
| 633 | 685 | 52 | " | | Hard sand and shale |
| 685 | 728 | 43 | " | | Sandy shale |
| 728 | 785 | 57 | " | | Shale and sandy shale |
| 785 | 807 | 22 | " | | Gray sand and shale |
| 807 | 831 | 25 | Cored | 13 ft. | Fine gray sand-considerable mica |
| 831 | 971 | 140 | Drilled | | Sandy shale |
| 971 | 1043 | 72 | " | | Gray sand and shale |
| 1043 | 1038 | 45 | " | | Hard sand with streaks of shale |
| 1038 | 1110 | 22 | " | | Shale |
| 1110 | 1220 | 110 | " | | Sandy shale |
| 1220 | 1260 | 40 | " | | Sand and shale |
| 1260 | 1290 | 30 | " | | Brown shale |
| 1290 | 1305 | 15 | " | | Conglomerate (green) |
| 1305 | 1376 | 71 | " | | Yellow clay and conglomerate |
| 1376 | 1436 | 60 | " | | Shale |
| 1436 | 1450 | 14 | " | | Sand and shale |
| 1450 | 1530 | 30 | " | | Tough shale |
| 1530 | 1584 | 54 | " | | Conglomerate & tough shale |
| 1584 | 1596 | 12 | Cored | 9 ft. | Light brown shale with green and white nodules. |
| 1596 | 1609 | 13 | Drilled | | Hard shale |
| 1609 | 1650 | 41 | " | | Tough shale |
| 1650 | 1753 | 100 | " | | Shale and conglomerate with sand |
| 1753 | 1805 | 52 | " | | Shale and hard sand |
| 1805 | 1827 | 22 | " | | Tough shale |
| 1827 | 1376 | 49 | " | | Shale and conglomerate. |
| 1876 | 1974 | 93 | " | | Shale and sandy shale |
| 1974 | 2008 | 34 | " | | Hard sand and shale |
| 2008 | 2060 | 52 | " | | Hard shale and conglomerate |
| 2060 | 2124 | 64 | " | | Hard sand and streaks of shale |
| 2124 | 2166 | 42 | " | | Hard sand |
| 2166 | 2220 | 56 | " | | Hard shale and streaks of sand |
| 2220 | 2288 | 68 | " | | Hard sandy shale |
| 2288 | 2314 | 26 | " | | Hard sand & tough brown shale |
| 2314 | 2327 | 13 | " | | Tough shale |

STATE OF CALIFORNIA
 DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

LOG AND CORE RECORD OF OIL OR GAS WELL

Operator _____ Field _____

Well No. _____ Sec. _____, T. _____, R. _____, S. _____ E. & M.

FORMATIONS PENETRATED BY WELL

| DEPTH TO | | Thickness | Drilled
or Cored | Remarks | DESCRIPTION |
|------------------|---------------------|-----------|---------------------|---------|--|
| Top of Formation | Bottom of Formation | | | | |
| 2327 | 2411 | 84 | Drilled | | Hard shale and streaks of sand |
| 2411 | 2425 | 14 | " | | Hard sand and shell-Black shale |
| 2425 | 2451 | 26 | " | | Hard black shale (2425 |
| 2451 | 2461 | 10 | Drilled | | Hard shale |
| 2461 | 2471 | 10 | " | | Sand |
| 2471 | 2490 | 19 | " | | Streaks of sand and shale |
| 2490 | 2504 | 14 | " | | Hard shale |
| 2504 | 2557 | 53 | " | | Streaks of hard sand & shale |
| 2557 | 2575 | 18 | " | | Sandy shale |
| 2575 | 2620 | 45 | " | | Hard sand-streaks of shale |
| 2620 | 2634 | 14 | " | | Sand and shale |
| 2634 | 2637 | 3 | Cored | 1 | Fine grained gray sand. |
| 2637 | 2665 | 28 | Drilled | | Sand and shale |
| 2665 | 2668 | 3 | " | | Sand |
| 2668 | 2675 | 7 | " | | Hard shale |
| 2675 | 2679 | 4 | " | | Sand |
| 2679 | 2683 | 4 | " | | Shell |
| 2683 | 2719 | 36 | " | | Hard sand and shale |
| 2719 | 2725 | 6 | " | | Sand and shale |
| 2725 | 2739 | 14 | " | | Hard sand and shale |
| 2739 | 2749 | 10 | " | | Sand and shale |
| 2749 | 2752 | 3 | " | | Hard black shale |
| 2752 | 2764 | 12 | " | | Hard sand |
| 2764 | 2768 | 4 | " | | Sticky yellow clay |
| 2768 | 2780 | 12 | " | | Hard sand |
| 2780 | 2786 | 6 | " | | Hard black shale |
| 2786 | 2821 | 35 | " | | Streaks of sand and shale |
| 2821 | 2843 | 22 | Cored | 18 | 4 ft. hard brown shale |
| | | | | | 14 ft. gray sand |
| 2843 | 2905 | 62 | Drilled | | Streaks of hard sand and shale |
| 2905 | 2930 | 25 | " | | Soft sand |
| 2930 | 2942 | 12 | " | | Black shale |
| 2942 | 3000 | 58 | " | | Hard sand and shale |
| 3000 | 3014 | 14 | " | | Hard sand |
| 3014 | 3028 | 14 | " | | Hard sand-streaks of tough shale |
| 3028 | 3144 | 116 | " | | Hard sand and shale |
| 3144 | 3154 | 10 | " | | Hard shale |
| 3154 | 3253 | 99 | " | | Hard sand and shale |
| 3253 | 3270 | 17 | " | | Hard shale with streaks of sand |
| 3270 | 3284 | 14 | " | | Hard brown shale |
| 3284 | 3298 | 14 | " | | Hard sand |
| 3298 | 3393 | 95 | " | | Hard streaks of sand and shale |
| 3393 | 3405 | 12 | " | | Shale and sand - good oil and gas
showings on ditch |
| 3405 | 3425 | 20 | Cored | 6 | 6 ft. sandy gray shale. |

STATE OF CALIFORNIA
 DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

LOG AND CORE RECORD OF OIL OR GAS WELL

Operator _____ Field _____

Well No. _____ Sec. _____ T. _____ R. _____ S. & M. _____

FORMATIONS PENETRATED BY WELL

| DEPTH TO | | Thickness | Drilled
or Cored | Recovery | DESCRIPTION |
|------------------|---------------------|-----------|---------------------|----------|--|
| Top of Formation | Bottom of Formation | | | | |
| 3425 | 3454 | 29 | Drilled | | Hard sand and shale |
| 3454 | 3499 | 45 | " | | Hard shale |
| 3499 | 3506 | 7 | " | | Tough brown shale |
| 3506 | 3528 | 20 | Cored | 12 | Dark gray sandy shale
Dried conchoidal fracture |
| 3528 | 3567 | 39 | Drilled | | Hard shale |
| 3567 | 3590 | 23 | " | | Hard shale |
| 3590 | 3625 | 35 | " | | Hard sandy shale |
| 3625 | 3635 | 10 | " | | Hard shale |
| 3635 | 3645 | 10 | " | | Shale and sand- some gas showings |
| 3645 | 3697 | 52 | " | | Hard shale |
| 3697 | 3712 | 15 | Cored | 15 | Dark brown shale |
| 3712 | 3717 | 5 | " | 4 | Dark gray platy shale |
| 3717 | 3765 | 48 | Drilled | | Hard shale |
| 3765 | 3776 | 11 | " | | Hard sand and shale streaks |
| 3776 | 3848 | 72 | " | | Hard shale |
| 3848 | 3901 | 53 | " | | Hard sandy shale |
| 3901 | 3906 | 5 | " | | Sand |
| 3906 | 3920 | 14 | " | | Sand and streaks of shale |
| 3920 | 3925 | 5 | " | | Soft sand and shale |
| 3925 | 3932 | 7 | " | | Tough shale |
| 3932 | 3964 | 32 | " | | Hard sandy shale |
| 3964 | 4058 | 94 | " | | Hard sand and shale |
| 4058 | 4080 | 22 | Cored | 21 | 9 ft. gray sand- 4 ft. dark gray
gray sandy shale - 10 ft. gray sand-
all contained carbonaceous material |
| 4080 | 4104 | 24 | Drilled | | Sand and shale |
| 4104 | 4125 | 21 | Cored | 6 | Fine gray sand with carbonaceous
material |
| 4125 | 4158 | 33 | Drilled | | Sand with streaks of hard sand |
| 4158 | 4160 | 2 | " | | Hard sand or snell |
| 4160 | 4184 | 24 | " | | Hard sand |
| 4184 | 4191 | 7 | " | | Hard sand and shale |
| 4191 | 4209 | 18 | " | | Loose sand and hard shale |
| 4209 | 4236 | 27 | " | | Sticky brown shale |
| 4236 | 4255 | 19 | " | | Hard sandy shale |
| 4255 | 4268 | 13 | " | | Hard brown shale |
| 4268 | 4275 | 7 | " | | Sand - Lots of gas |
| 4275 | 4277 | 2 | " | | brown shale |
| 4277 | 4287 | 10 | " | | Tough shale |
| 4287 | 4303 | 16 | Cored | 15 | 10 ft. gray sandy shale with
carbonaceous material in part
2 ft. fine gray sand - 3 ft. gray
sandy shale. |

DIVISION OF OIL AND GAS

LOG AND CORE RECORD OF OIL OR GAS WELL

Operator _____ Field _____
Well No. _____ Sec. _____, T. _____, R. _____, S. _____, E. _____, N. _____, W. _____, R. & M. _____

FORMATIONS PENETRATED BY WELL

| DEPTH TO | | Thickness | Drilled
or Cored | Recovery | DESCRIPTION |
|--|---------------------|-----------|---------------------|----------|---|
| Top of Formation | Bottom of Formation | | | | |
| 4303 | 4318 | 15 | Cored | 15 | 10 ft. gray shale with gray sand Partings-badly fractured- 5 ft. dark brown shale-platey. |
| 4318 | 4337 | 19 | " | 15 | 3 1/2ft. dark brown shale with thin partings of gray sand - 21/2 ft. hard sandstone shell - 9 ft. of dark brown shale. 35° dip. |
| 4337 | 4356 | 19 | " | 9 | Dark brown shale with partings of gray sand - badly fractured - some slickensides. |
| 4356 | 4375 | 19 | " | 18 | 15 ft. tight coarse gray sand - 3 ft. dark brown fractured shale. |
| 4375 | 4398 | 23 | " | 9 | 9 ft. hard dark brown shale with 2 to 4 inch sandstone shells scattered throughout the column. |
| 4398 | 4418 | 20 | Drilled | 11 | Hard sand |
| 4418 | 4430 | 12 | Cored | | Hard brown shale-top 3 ft. fractured |
| 4430 | 4494 | 64 | Drilled | | Hard shale and sand |
| 4494 | 4513 | 19 | " | | Hard sand and shale |
| 4513 | 4549 | 36 | " | | Hard shale and sand |
| 4549 | 4624 | 75 | " | | Hard shale |
| 4624 | 4680 | 56 | " | | Sandy shale |
| 4680 | 4790 | 110 | " | | Sandy shale with hard streaks |
| 4790 | 4811 | 21 | " | | Shale |
| Re-Drilled Formations from 4158 to 4201 - Not Logged | | | | | |
| 4201 | 4211 | 10 | Drilled | 9 | Shale |
| 4211 | 4271 | 60 | " | | Sand |
| 4271 | 4285 | 14 | Cored | | 8 ft. sandy gray shale - 3 ft. fine grained gray sand with partings of shale (coal |
| 4285 | 4296 | 11 | Drilled | | Sand |
| 4296 | 4391 | 95 | " | | Sand & Shale - gas showing |
| 4391 | 4414 | 23 | " | | Shale |
| 4414 | 4516 | 102 | " | | Hard & sticky shale |
| 4516 | 4535 | 19 | " | | Sand-streaks of hard sand |
| 4535 | 4555 | 20 | " | | Hard shale |
| 4555 | 4574 | 19 | " | 9 | Sand & shale |
| 4574 | 4608 | 34 | " | | Shale |
| 4608 | 4623 | 15 | " | | Hard shale-streaks of sand |
| 4623 | 4671 | 48 | " | | Sand and shale |
| 4671 | 4724 | 53 | " | | Hard shale |
| 4724 | 4757 | 33 | " | 9 | Sticky shale-hole is sluffing |
| 4757 | 4785 | 28 | " | | |

Page 5.

STATE OF CALIFORNIA
DEPARTMENT OF MINERAL RESOURCES

DIVISION OF OIL AND GAS

LOG AND CORE RECORD OF OIL OR GAS WELL

Operator _____ Field _____

Well No. _____ Sec. _____, T. _____, R. _____ S. & M. _____

FORMATIONS PENETRATED BY WELL

| DEPTH TO | | Thickness | Drilled
or Cased | Summary | Description |
|--------------|---------------------|-----------|---------------------|---------|---------------------------------------|
| of Formation | Bottom of Formation | | | | |
| 875 | 878 | 3 | Drilled | | Shale |
| 878 | 883 | 5 | | | Sand. strong show of gas |
| 883 | 884 | 1 | Cased | 18 | 6" hard sandstone shell |
| 884 | 886 | 2 | | | 17 1/4 in. hard gray sandy shale |
| 886 | 887 | 1 | Drilled | | Sandy shale, shale |
| 887 | 888 | 1 | | | Shale and sand |
| 888 | 889 | 1 | | | Shale |
| 889 | 890 | 1 | | | Sand, oil & gas on ditch, gas ignited |
| 890 | 891 | 1 | | | Shale |
| 891 | 892 | 1 | | | Shale and sand |
| 892 | 893 | 1 | | | Sand |
| 893 | 894 | 1 | | | Shale |
| 894 | 895 | 1 | | | Sand |
| 895 | 896 | 1 | | | Shale |
| 896 | 897 | 1 | | | Sand |
| 897 | 898 | 1 | | | Shale |
| 898 | 899 | 1 | | | Sand - heavy gas flow |
| 899 | 900 | 1 | | | Shale - thin streaks of sand |
| 900 | 901 | 1 | | | Sandy shale |
| 901 | 902 | 1 | | | Sand and shale - heavy gas flow |
| 902 | 903 | 1 | | | and light oil - well blow out. |

SUBMIT IN DUPLICATE
 STATE OF CALIFORNIA
 DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

History of Oil or Gas Well

Operator Cal-Bay Corporation FIELD - - - - -

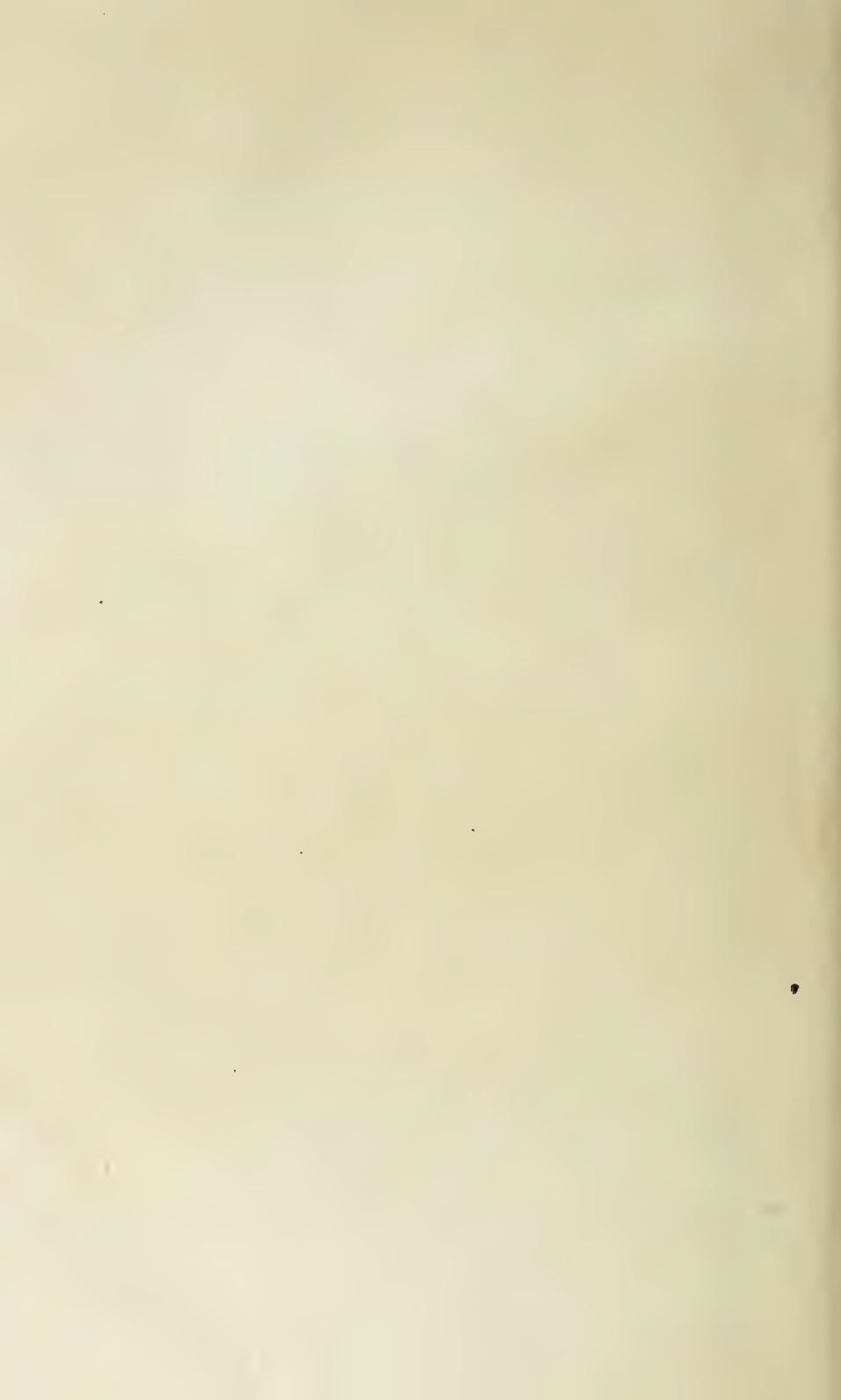
Well No. "Faria" # 1 Sec. 21, T. 2 N, R. 1 W, S. B. & M.

Signed _____

Date January 15, 1945 Title _____

Use this form in reporting all important operations at the well, together with the dates thereof, in the order of their performance. Such operations include drilling, re-drilling, deepening, plugging, or altering casing or by perforating, shooting, or pulling. Include in your report: size of hole drilled, redrilled, or deepened; size, weight and length of casing landed, cemented, or removed; amount and location of perforations; number of sacks of cement used in cementing or plugging operations; number of feet of cement drilled out of casing; location of top and bottom of cement plugs. If the well was dynamited, give date, dimensions and weight of all shots. If tests were made give interval tested and results of tests, such as amount and nature of fluids recovered.

1943
 July 14 Spudded in drilling a 15" hole.
 " 15 Run 10 3/4" - 45# casing and cemented at 523 ft. with 440 sacks of construction cement.
 " 20 Drilling and coring ahead making 9 5/8" hole.
 Aug. 26 Ran Schlumberger.
 Sept. 1
 " 7 Shut down - waiting on core analysis.
 Sept. 24 Struck heavy gas flow at depth of 4263 ft. Had to circulate till Sept. 29 to kill gas. Put in new mud and 520 sacks of Baroid.
 " 29 Ran Schlumberger.
 " 30 Ran Johnston Formation tester - sidewall packer failed to hold - Depth 4277 ft.
 Oct. 1 Ran Johnston Formation tester - sidewall packer failed to hold - Depth 4303 ft.
 " 5 Ran Johnston Formation tester on shoulder at 4287 ft. Tester open 17 minutes - light steady blow. Depth 4313 ft.
 " 9 Ran Schlumberger - Depth 4375 ft.
 " 13 Cemented 7 inch C.D. - 23# new casing at 4347 ft. with 180 sacks of Golden Gate Cement.
 " 20 Shot perforated 4 - 3/8" holes - 4250-4251 by S Schlumberger. Ran Johnston Formation Tester - Packer at 4240 ft. Formation tester open 1 hour - 40 ft. mud fluid in 7" pipe - no water.
 " 21 Shot perforated 7" casing 4252-4276 with 22 - 3/8" holes - Shot by S Schlumberger - Ran Johnston Formation Tester - valve open 4 A.M. - Estimated blow 100,000 cubic feet of gas. Well closed in and at 4 A.M. had built up a pressure of 700 lbs.
 " 27 Shot perforated 7" casing 4231-4239 ft. with 9 - 1/2" holes and 3782-3769 with 4 - 1/2" holes. Shot by Schlumberger. Ran Johnston Formation Tester - Packer at 4240 ft. - valve open 1 2/3 hours - Estimated blow 125,000 cubic feet of gas. Maximum bottom hole pressure 2125 lbs. Packed up and set packer at 3760 ft. to test perforations at 3763 to 3764 ft. Test showed upper perforations wet.
 " 29 Temporarily suspended operations on well.
 1944
 July 8 Resumed operations on well.
 " 11 Shot perforated 7" casing 4270 to 4280 ft. - 23 - 1/2" holes - Shot by Schlumberger.



SUBMIT IN DUPLICATE

STATE OF CALIFORNIA
 DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

History of Oil or Gas Well

OPERATOR _____ FIELD _____

Well No. _____, Sec. _____, T. _____, R. _____, E. & M. _____

Signed _____

Date _____ Title _____

(President, Secretary or Agent)

Use this form in reporting all important operations at the well, together with the dates thereof, in the order of their performance. Such operations include drilling, re-drilling, deepening, plugging, or altering casing as by perforating, shooting, or pulling. Include in your report size of hole drilled, redrilled, or deepened; size, weight and length of casing landed, cemented, or removed, amount and location of perforations; number of sacks of cement used in cementing or plugging operations, number of feet of cement drilled out of casing, location of top and bottom of cement plugs. If the well was dynamited, give date, dimensions and weight of all shots. If tests were made give interval tested and results of tests, such as, amount and nature of fluids recovered.

Date 1944
 1. 14 Ran 2 1/2" tubing to 4240 ft. Packer at 4110 ft. Swabbed well but could not get enough gas to make it commercial.
 24 Shot perforated the 7" casing - 4 - 8" holes at 3520 and 4 - 8" holes at 3880 ft. Pumped in 45 sacks of cement under pressures up to 2500 lbs. to seal off perforations.
 25 Drilling ahead making 6 1/4" hole.
 26 Drilling at 4811 ft. Heavy gas showing. Having trouble with heaving shale.
 22 Pulled 3" drill pipe in two - 6 stands down
 26 Fishing for 3" drill pipe. Recovered all but drill collar and bit
 26 stuck in shoe of casing at 4343 ft.
 26 Well idle
 29 Rigging up - Continued fishing to Oct. 6 but could not recover fish.
 29 Pumped in 20 sacks of cement at 4343 ft. for plug below window.
 29 Top of plug at 4357.
 30 Milling window in 7" casing - 18 ft. long - from 4158 to 4176.
 30
 31
 15 Set Beach-Ross whipstock 3°. Angle oriented East. Drilling ahead making 6 1/4" hole
 22 Drilling at 4785 - Hole is sluffing - had to use Baroid to get back to bottom - Heaving shale
 27 Got back to bottom
 27 Pipe stuck - spotted oil
 27 Worked pipe free
 27 Started to make new hole
 23 When well is closed in Top hole pressure goes to 1800 lbs. Takes 11 1/2" mud to hold down.
 25 Pipe stuck - 2 stands and a single off bottom.
 27 Spotted oil
 29 Well blew out at 11:00 A.M. Very heavy gas pressure. Sprayed light oil to top of derrick. Took 2 hours to bring under control.
 30 Mixing mud and Baroid. Lost circulation - could not regain circulation under 3700 pump pressure.
 30
 30 Started to left hand out drill pipe - backed off 19 stands and a single.

SUBMIT IN DUPLICATE
STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

History of Oil or Gas Well

OPERATOR _____ FIELD _____

Well No. _____, Sec. _____, T. _____, R. _____, S. & M. _____

Signed _____

Date _____ Title _____
(President, Secretary or Agent)

Use this form in reporting all important operations at the well, together with the dates thereof, in the order of their performance. Such operations include drilling, re-drilling, deepening, plugging, or altering casing as by perforating, shooting, or pulling. Include in your report size of hole drilled, re-drilled, or deepened; size, weight and length of casing landed, cemented, or removed, amount and location of perforations; number of sacks of cement used in cementing or plugging operations, number of feet of cement drilled out of casing, location of top and bottom of cement plugs. If the well was dynamited, give date, dimensions and weight of all shots. If tests were made give interval tested and results of tests, such as, amount and nature of fluids recovered.

Ran wash pipe - could not get below 4153 ft. Top of fish 4134 ft.
Concluded casing has collapsed on drill pipe above window in 7" at
4150 ft. Left 60 ft. 3" drill pipe, drill collar and bit in hole.
Making decision as to future operations.

5) Personal service made on Company attorney by U.S. Navy, being a formal
notice of possession, to take effect January 15, 1915, including part
of land and well.

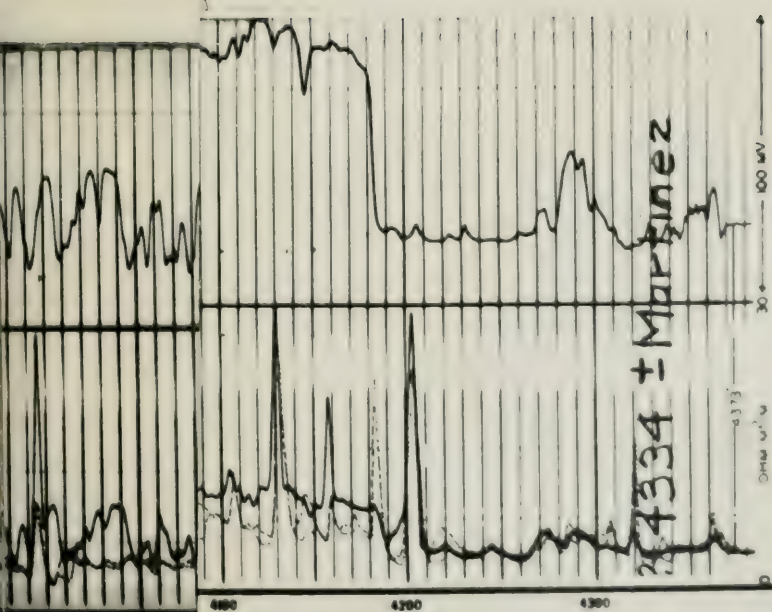
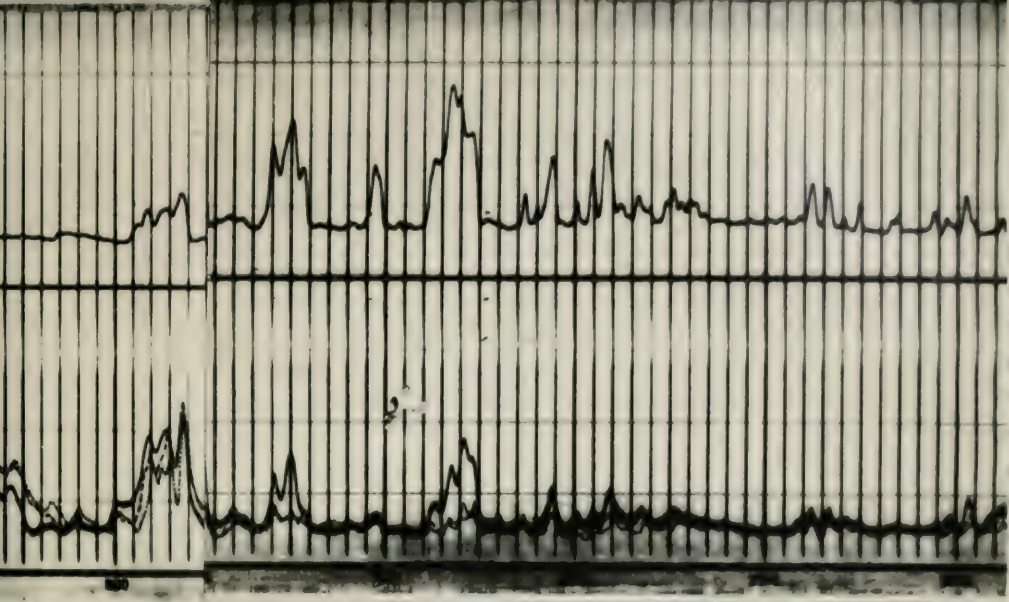
4) Cleaned out to 4134 ft.
Pumped in 60 sack of Mt. Diablo cement through drill pipe hanging at
4134 ft..
Pulled up to 380 ft. and pumped in 65 sacks of cement.
5) Found top of cement plug at 3447 ft.

5) Filled hole with heavy mud and welded cap on 7" and 11-3/4" casing.
Removed derrick and equipment.
Cleaned up well location.

NOTE: This well has undoubtedly made a gas and oil discovery, but
the completion of the well as a commercial producer, could not be
effected, as over one-half of the leased lands of Cal Bay Corp.,
including the well, was condemned by the U. S. Government, for use
of the Navy, as part of the lands to be incorporated in the Fort
Chicago Ammunition Storage Area, in accordance with previous notices.

Enclosed 3

No 23529-5
Depts Exhibit No. 35 (Ident)
Filed FEB 4 1917
C. W. Carter, U. S. A.
By L. R. Ellington
Deputy Clerk



43334 + Martinez

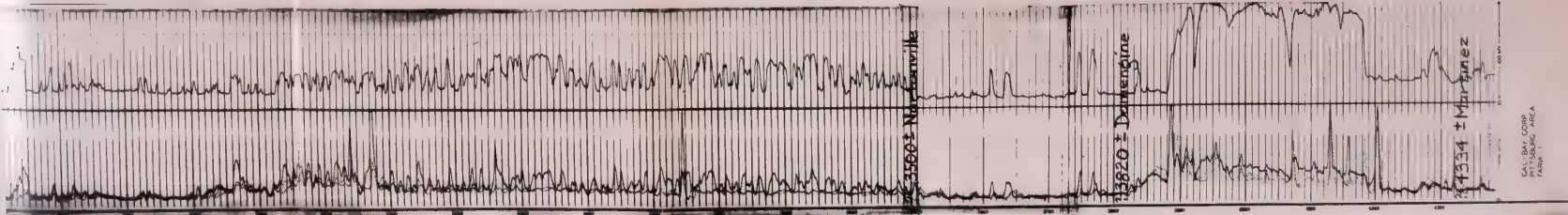
30 100 mV

CAL-BAY CORP
PITTSBURG AREA
FARIA 1

CAL-BAY CORP.
PITTSBURG AREA
PARIA 1
21 1 2N 8 1W
CONTRA COSTA CALIF.
421' RT

WELL: PITTSBURG AREA
TUBES: PARIA 1
COMPANY: CONTRA COSTA
PLUG NO.

7245 1.245
4271 1.241
4272 1.239
4273 1.237
4274 1.235
4275 1.233
4276 1.231
4277 1.229
4278 1.227
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M. O. JOHNSTON OIL FIELD SERVICE CORPORATION

3117 San Fernando Road

Los Angeles, California

—Phones

TEST TICKET

No. 6201

Los Angeles ... ALbany 0186

Bakersfield ... Phone 2794

Ventura ... Phone 5481

Stockton ... Phone 1636

Customer's Order No. _____

Date

11-27-43

Name Cal-Buy CorpWell No. 1Address to Mail Invoice 15405 Buena Vista Lane, FullertonOrange, CalifDistrict Central County Ortega

FORMATION TEST No. _____

SHOE TEST No. 3

Successful No. _____

Mile-run No. _____

Successful No. 3

Mile-run No. _____

Size Hole _____

Depth Well 9220'Size Casing 7"

Bit Hole Size _____

Depth _____

Tool Jt. 2 1/2 4220'sDepth of Shoe 9220'-9220'

Formation Shoulder _____

Test Tool Size 5"

Open Below Shoe _____

Depth to Shoulder _____

Sub Size _____

Packer Set At 9240

Packer Set At _____

Sub Rented from _____

Type Packer Used Cal

Jar Used (Size) _____

(Make) _____

Type Packer Used _____

Anchor: Size _____

Length _____

Bottom of Perforation at _____

Taper—Turned to _____

Pressure Recorder—Make _____

Cap _____

No. _____

Rubber—Turned to _____

Size Bean _____

Drill Pipes: Run Dry _____

, with Fluid _____

RESULTS

Set Packer _____

— M. Open Trip Valve _____

— M. Let Packer Set. 4220

Shot in Pressure Time _____

Did Shoulder Hold? Yes

Blow? _____

10000 PSI TO SURFACE

Fluid Rise _____

TEST O.K.

Was Anchor Plugged? NoWas Tool Plugged? No

WAS RUBBER DAMAGED? _____

Time Chargeable to Test _____

Car No. _____

Speedometer End of Trip _____

Speedometer Start of Trip _____

TOTAL MILES _____

M. O. Johnston Oil Field Service Corporation shall not be liable for damage of any kind to the property or personnel of the one for whom a test is made or for any loss suffered or sustained, directly or indirectly through the use of its equipment, or its statement or opinion concerning the result of any test.

Approved _____

Our Representative _____

A ticket must be made with complete information for each run, whether successful or not.

Form 3

M. O. JOHNSTON

PLAINTIFF'S Exhibit N
OIL FIELD SERVICE CORPORATION

3117 San Fernando Road

Los Angeles, California

—Phone

TEST TICKET

No. 6201

Los Angeles ... Albany 0186

Bakersfield ... Phone 8794

Ventura ... Phone 5881

Stockton ... Phone 1636

Customer's Order No. _____

Date 11-27-42

Name Cal-Bay Corp.

Well No. 1

Address to Mail Invoice 15444 Buena Vista Lane Franklin

STOCKTON, CALIF.

District 100000 County 00000

FORMATION TEST No. _____

SHOE TEST No. _____

Successful No. _____

Mile-run No. _____

Successful No. 3

Mile-run No. _____

Size Hole _____

Depth Well 9220'

Size Casing 7"

Rot Hole Size _____

Depth _____

Tool Jt. 2 1/2

Depth of Shoe 9220'-9220'

Formation Shoulder _____

Test Tool Size 5

Open Below Shoe

Depth to Shoulder _____

Sub Size _____

Packer Set At 8240

Packer Set At _____

Sub Rented from _____

Type Packer Used 021

Jar Used (Size) _____

(Make) _____

Type Packer Used _____

Anchor Size _____

Length _____

Bottom of Perforation at _____

Taper—Turned to _____

Pressure Recorder—Make _____

Cap _____

No. _____

Rubber—Turned to _____

Size Bean _____

Drill Pipe: Run Dry _____

, with Fluid _____

RESULTS

Set Packer _____

— M. Open Trip Valve _____

— M. Let Packer Set _____

Shut in Pressure Time _____

Did Shoulder Hold? YES

Blow? _____

Fluid Rise _____

TEST O.K.

Was Anchor Plugged? N

Was Tool Plugged? N

WAS RUBBER DAMAGED? _____

Time Chargeable to Test _____

Car No. _____

Speedometer End of Trip _____

Speedometer Start of Trip _____

TOTAL MILES _____

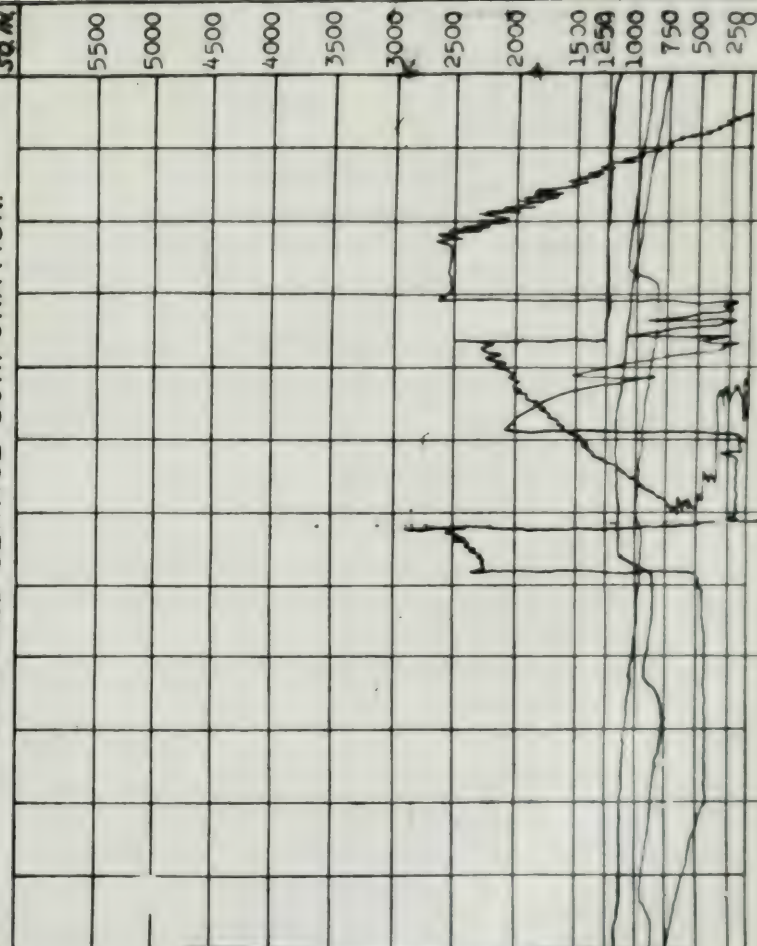
Approved _____

Our Representative _____

A ticket must be made with complete information for each run, whether successful or not.

M.O. JOHNSTON
OIL FIELD SERVICE CORPORATION.

**LBS
PER
SQ. IN.**



DATE, October 27, 1943
COMPANY, Cal-Bay Oil Co.
WELL, Parin #1
LOCATION, Concord
PACKER SET AT, 3760'
HOLE OPEN TO,
RECORDER NO.,
CAPACITY,
RECORDER DEPTH,
CALIBRATED,
TEMPERATURE,
FLUID RISE,
FLOW PERIOD, 18 Hours
SHUT IN PERIOD,
TICKET NO. 6202
PRESSURE,

No. 23529-B
Plt. Exhibit No. N
Filed JAN 24 1947
C. V. Clerk
By L. R. Ellington

Form 3

PLAINTIFF'S EXHIBIT Q

M. O. JOHNSTON OIL FIELD SERVICE CORPORATION

3117 San Fernando Road

Los Angeles, California

-Phones

TEST TICKET

No. 6202

Los Angeles . . . Albany 0186

Bakersfield . . . Phone 2794

Venture Phone 5621

Stockton Phone 1636

Customer's Order No. _____

Date

Name

Well No.

Address to Mail Invoice

1544 - 1544 - 1544

Lease

District

County

FORMATION TEST No.

SHOE TEST No.

Successful No.

Mis-run No.

Successful No.

Mis-run No.

Size Hole

Depth Well

Size Casing

Rat Hole Size

Depth

Tool Jt.

24 Hynes

Depth of Shoe

Formation Shoulder

Test Tool Size

Open Below Shoe

Depth to Shoulder

Sub Size

Packer Set At

Packer Set At

Sub Rented from

Type Packer Used

Jar Used (Size)

(Make)

Type Packer Used

Anchor: Size

Length

Bottom of Perforation at

Taper—Turned to

Pressure Recorder—Make

Cap

No.

Rubber—Turned to

Size Bean

Drill Pipe: Run Dry

NLL

with Fluid

RESULTS

Set Packer

M. Open Trip Valve

9:00 P

M.

Let Packer Set

Shut In Pressure Time

Did Shoulder Hold?

Blow?

Fluid Rise

(Endorsed): Filed Jan. 24, 1947.

Was Anchor Plugged?

Was Tool Plugged?

WAS RUBBER DAMAGED?

Time Chargeable to Test

Car No.

Speedometer End of Trip

Speedometer Start of Trip

TOTAL MILES

M. O. Johnston Oil Field Service Corporation shall not be liable for damage of any kind to the property or personnel of the one for whom a test is made or for any loss suffered or sustained, directly or indirectly, through the use of its equipment, or its statement or opinion concerning the result of any test.

Approved

Our Representative

A ticket must be made with complete information for each run, whether successful or not.

No.

Exhibit No. G

Filed

C. W. Calhoun, Clerk

By

M. O. JOHNSTON
OIL FIELD SERVICE CORPORATION.

PLAINTIFF'S EXHIBIT R
(Endorsed): Filed Jan. 24, 1947.

| LBS
PER
SQ. IN. | |
|-----------------------|--|
| 3750 | |
| 3500 | |
| 3250 | |
| 3000 | |
| 2750 | |
| 2500 | |
| 2250 | |
| 2000 | |
| 1750 | |
| 1500 | |
| 1250 | |
| 1000 | |
| 750 | |
| 500 | |
| 250 | |
| 0 | |

DATE 10-5-43
 COMPANY Cal Bay
 WELL Faring #1
 LOCATION Pittsburg
 PACKER SET AT 4287
 HOLE OPEN TO 4318
 RECORDER NO. P-130
 CAPACITY 3750#
 RECORDER DEPTH 4311
 CALIBRATED September 24, 1943
 TEMPERATURE _____
 FLUID RISE _____
 FLOW PERIOD 18 MIN
 SHUT IN PERIOD _____
 TICKET NO. 6015
 PRESSURE _____

No 23529-6
PCP Exhibit No. R
 Filed JAN 24 1947
 C. W. Carbreath, Clerk

10/20/43

4- Hob. Prof. at 4221

John - Test. pushed out 9:00

Value approx. at 2 PM

Closed at 7 PM -

42' mud

110 water

3" H. Pyre

Per Jan - 2 at 4221 to 4271

32 - 3/8 hole -

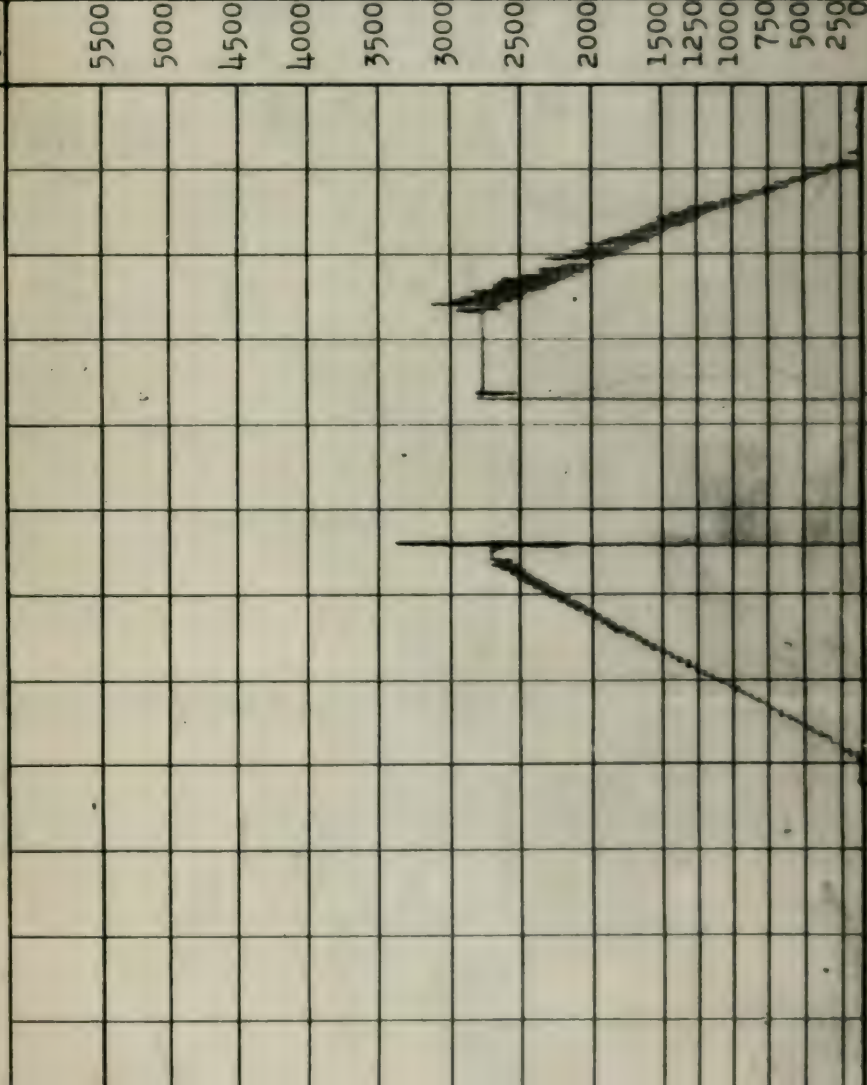
Butter shoe 4343

By C. R. Ellington Deputy Clerk
C. W. (Attorney) (Type)
Filed JAN 24 1947
Exhibit No. 5
No. 23529-5

217
4

M.O. JOHNSTON
OIL FIELD SERVICE CORPORATION.

LBS.
PER
SQ. IN.



DATE. 10-20-43

COMPANY. Cal. Bay Corp

WELL. 1

LOCATION. Faria

PACKER SET AT. 4240'

HOLE OPEN TO. 4330'

RECORDER NO. 131

CAPACITY. 5500#

RECORDER DEPTH. 4254'

CALIBRATED. Oct. 19, 1943

TEMPERATURE. ✓

FLUID RISE. 42'

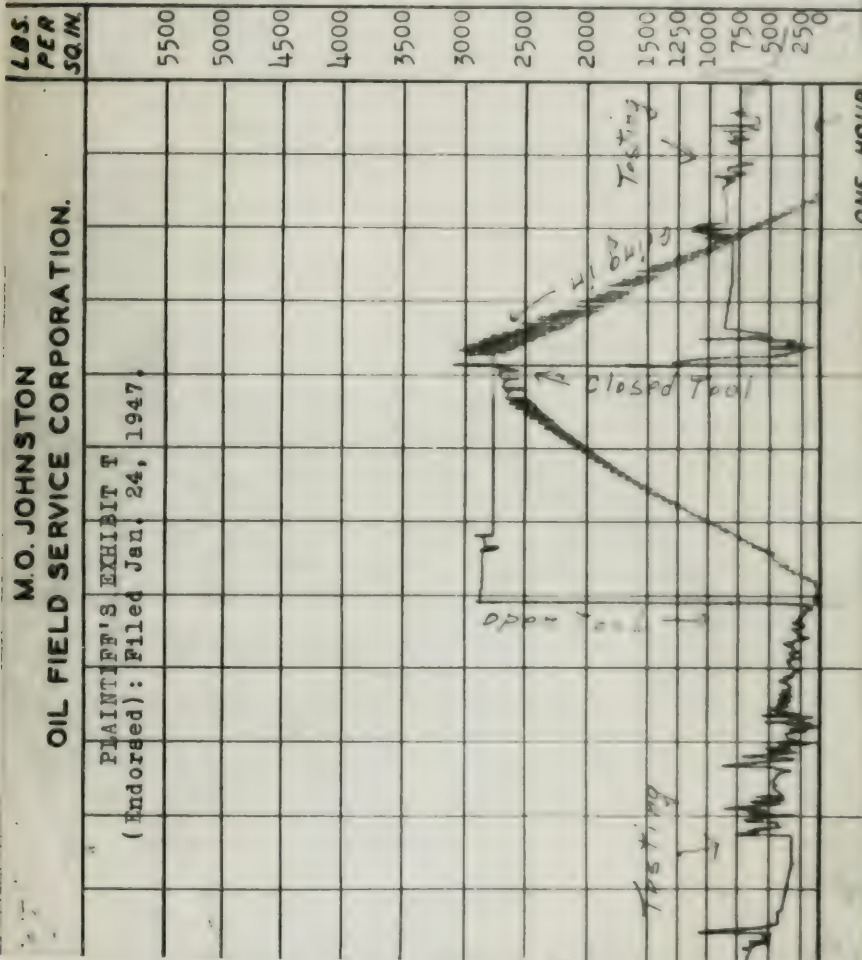
FLOW PERIOD. 1 hr.

SHUT IN PERIOD. ✓

TICKET NO. 6757

PRESSURE.

M.O. JOHNSTON OIL FIELD SERVICE CORPORATION.



DATE. 10/21

COMPANY. CAL. BAY

WELL. 1

LOCATION. Enxcoed

PACKER SET AT. 4242

HOLE OPEN TO.

RECORDER NO. 131

CAPACITY. 5500#

RECORDER DEPTH.

CALIBRATED. Oct. 19, 1943

TEMPERATURE.

FLUID RISE 8 ft

FLOW PERIOD. 1 hour

SHUT IN PERIOD 3 1/2 hours

TICKET NO. 6758

PRESSURE.

No 23529-6
Exhibit No. T.
Filed JAN 24 1947

C. W. Carls, Jr., Clerk

HALLIBURTON OIL WELL CEMENTING CO.

CEMENTING TICKET

Date *N-27-44*

Loc *Tetbury*

Charge to *Cal - Bay - Corp*

Order No.

Mail Address

Stockton

State

Calif

Owner of Well

Cal - Bay - Corp

Contractor

Rever

Well No.

Farm

Island

County

Santa Clara

Sec.

Twp.

Range

Depth of well

Depth of Cement

4747

Size

Weight

Kind of Cement

Amount and Kind of Cement

✓

13.3

3 1/2

Truck No.

Truck

Truck

Truck

Truck

Truck

Truck

Truck

Truck

Truck

Truck

Truck

Truck

Truck

Truck

Truck

Kind of Job

Spotting Oil

Special Tools

Plug

No.

to Plug Back

Feet

to Plug Back

Feet

to Plug Back

Feet

to Plug Back

Feet

to Plug Back

Feet

to Plug Back

Feet

to Plug Back

Feet

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to Plug Back

Feet

to Plug Back

Feet

to Plug Back

Feet

to Plug Back

Feet

to Plug Back

Feet

to Plug Back

Feet

to Plug Back

Floating Equipment Used

Time Required Mixing and Pumping Cement

1 hr

Circulating

Max

500

800

Request

on Pipe by

Necessity

Feet

Request

on Pipe by

Necessity

Feet

Request

on Pipe by

Necessity

Feet

Request

on Pipe by

Necessity

Feet

Request

on Pipe by

Necessity

Feet

Request

on Pipe by

Necessity

Feet

Request

on Pipe by

Necessity

Feet

Request

on Pipe by

Necessity

Feet

Condition of Mud

OK

Condition of well

at time of Cementing

Stuck D.P.

Chemical Used

Truck

called out

8

PM

Truck

called out

3

PM

Truck

called out

430

PM

Truck

called out

530

PM

Truck

called out

530

PM

Truck

called out

530

PM

Truck

called out

530

PM

Truck

called out

530

PM

Price Reference No.

Price Job

Other Costs

Total Chg

147.50

32.00

177.50

REMARKS

*pumped 18 Barrels of oil into
dull pipe, put 10 Barrels out of
dull pipe. They moved with their pumps
and Bit Check #161
Discount \$10.00. Check for 167.50*

The above job was done under the supervision of the owner, operator or his agent whose signature appears here below

Cement

Ralph G. Wendt

Helper

A. E. Crowe

Agent of Contractor or Operator

Ralph G. Wendt

District

Whisper

State

Calif

The following information is urgently requested in order that we may be fully advised and to enable us to keep our standard of service up to the highest point

Was operation of the Cementing Equipment satisfactory?

Was the work of the Cementing Crew performed in a satisfactory manner?

Was the Cementing job satisfactorily completed?

SUGGESTIONS:

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

COPY

Notice of Intention to Deepen, Redrill, Plug or Alter Casing in Well

This notice must be given fifteen days before work begins when possible

Concord

Calif. July 20

1944

DIVISION OF OIL AND GAS

Gibson-Drexler Bldg.,

Santa Maria

Calif.

In compliance with Section 3203, Chapter 93, Statutes of 1939, notice is hereby given that it is our intention to commence the work of deepening, ~~redrilling, reworking, or reworking~~ at well No. "Faria" 1
(Cross out unnecessary words)

Sec. 21, T. 2 N, R. 1 W, M. D. R. & M.

Field, Contra Costa

County.

The present condition of the well is as follows: Total Depth 4308 Ft.

~~3. Casing~~

Casing: 12 1/2" oem. 618 ft.

7" - 23 # oem. 4343 ft. with 150 sax oem.

Shot perf: 4 - 1/8" holes-3768 - 3769 ft.

4 - 3/8" holes-4250-4251 ft.-Test for Div. of Oil & Gas-Dry.

22 - 3/8" holes-4269 - 4276 ft.

9 - 1/2" holes-4481 - 4289 ft.

Reperf. 28 - 1/2" holes-4270 - 4279 ft.

Ran 2 1/8" tubing with packer above 4260 ft. swabbed hole dry. No water and little gas.

The proposed work is as follows:

Clean out hole and drill and core ahead to try to locate a gas sand.

Your Division will be notified in the event a commercial gas sand is uncovered.

Send Copies to
Cal-Bay Corp.,
Box 605, Brentwood,
Contra Costa County, Calif.

B. R. Norris
1009 Subway Terminal Bldg.,
Los Angeles, 13, Calif.

No. 23529-B
U.S. Exhibit No. V
Filed FEB 4 1947
C. W. Chilton, Clerk
By L. R. Elkins
Deputy Clerk

Cal-Bay Corporation.
(Name of Operator)

By /s/ BYRON B. Norris, Engineer

[Endorsed]: No. 11695. United States Circuit Court of Appeals for the Ninth Circuit. Cal Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria and Mae E. Roche, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 24, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11695

5,430 ACRES OF LAND, more or less, situate in
the County of Contra Costa, State of Cali-
fornia, CAL-BAY CORPORATION, MARIA
FARIA, JOSEPH FARIA, JR., EDWARD
FARIA and MAE E. ROCHE,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD

To the Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit, and to the
attorney for appellee:

In accordance with the provisions of Rule 19,
subdivision 6, of the Rules of Practice of the United
States Circuit Court of Appeals for the Ninth Cir-
cuit, the appellants, Cal-Bay Corporation, Maria
Faria, Joseph Faria, Jr., Edward Faria and Mae E.
Roche, file this Statement of Points and designa-
tion of Record on Appeal on their appeal in the
above entitled cause:

1. Appellants adopt on this appeal the
Statement of Points on Appeal filed with the
Clerk of the trial court, as incorporated in the
Record on Appeal;

2. Appellants desire to have printed the entire record, subject to any order of the above entitled court dispensing with the reproduction or printing of exhibits and providing for the consideration of the originals.

Dated: July 29, 1947.

/s/ A. J. SCAMPINI,
/s/ WALTER E. HETTMAN,
/s/ HERBERT CHAMBERLIN,
Attorneys for Appellants.

Received copy July 29, 1947.

/s/ M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General, for
Appellee, United States
of America.

[Endorsed]: Filed July 31, 1947.

[Title of Circuit Court of Appeals and Cause.]

APPLICATION FOR CONSIDERATION OF
ORIGINAL EXHIBITS AND ORDER DIS-
PENSING WITH PRINTING

Appellants, Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, hereby apply to this Honorable Court for the consideration of Defendants' Exhibits 10, 11, 12, 13, 17, 25, 26, 28, 29, 32, 33, 37, and 38, and Plaintiff's Exhibits A, B, C, D, E, F, G, H, I,

J, K, L, M, O, P, W, X, Y, and Z, heretofore forwarded to the Clerk of this Court, pursuant to Rule 75(i) of the Federal Rules of Civil Procedure, on this appeal, and for an order dispensing with the reproduction or printing of these exhibits in the record on appeal.

This application is based on the affidavit of A. J. Scampini, verified July 29, 1947, and the stipulation of the attorney for the appellee, both hereto annexed.

Dated, July 29, 1947.

/s/ A. J. SCAMPINI,

/s/ WALTER E. HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for said Appellants.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT IN SUPPORT OF APPLICATION
FOR CONSIDERATION OF THE
ORIGINAL EXHIBITS ON APPEAL

State of California,

City and County of San Francisco—ss.

A. J. Scampini, being duly sworn, deposes and says: he is one of the attorneys for the appellants Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, and is familiar with the facts herein set forth.

Defendants' Exhibits 10, 11, 12, 13, 29, 32, 33,

37, and 38, and Plaintiff's Exhibits W, X, Y, Z, are large maps and by reason of their size and contents would be illegible if reduced to printing in the record; the same is true of Defendants' Exhibits 26 (photostat of notes and memoranda of one Mohr), 28 (Schlumberger report), and Plaintiff's Exhibit N (charts accompanying Johnston test); Defendants' Exhibit 17 is the log book of drilling operations of the oil or gas well involved in the litigation, and by reason of its bulk would unduly encumber the record and would be illegible if reduced to printing in the record; Defendants' Exhibit 25, and Plaintiff's Exhibits A to L, inclusive, M, O, P, are individual pages or sheets from the said log book (Defendants' Exhibit 17).

Wherefore, appellants pray for an order of the Court for a consideration of the originals of the said exhibits on this appeal and dispensing with the printing or reproduction thereof in the printed record on appeal.

/s/ A. J. SCAMPINI.

Subscribed and sworn to before me this 29th day of July, 1947.

[Seal] /s/ A. M. COGLIANDRO,

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires August 27, 1947.

[Title of Circuit Court of Appeals and Cause.]

ORDER DISPENSING WITH THE REPRODUCTION OR PRINTING OF EXHIBITS
AND PROVIDING FOR THE CONSIDERATION OF THE ORIGINALS

Upon application of appellants, Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, the stipulation of appellee, United States of America, and the affidavit of A. J. Scampini, and good cause appearing,

It is Ordered that Defendants' Exhibits 10, 11, 12, 13, 17, 25, 26, 28, 29, 32, 33, 37, and 38, and Plaintiff's Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, O, P, W, X, Y, and Z, may be omitted from the printed record in the above-entitled appeal, and that the said exhibits may be considered in their original form as though set out in the printed record.

Dated: Aug. 6, 1947.

/s/ FRANCIS A. GARRECHT,

Judge, United States Circuit
Court of Appeals.

[Endorsed]: Filed Aug. 6, 1947.

